U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. MARSHALL and U.S. POSTAL SERVICE,
POST OFFICE, Vicksburg, MS

Docket No. 98-2309; Submitted on the Record;
Issued March 15, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that his stroke was caused by factors of his federal employment.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that his stroke was caused by factors of his federal employment.

On June 20, 1997 appellant, then a 51-year-old letter carrier, filed a claim for an occupational disease (Form CA-2) alleging that he first realized that his stroke was caused or aggravated by his employment on May 30, 1997. He stated that his condition was caused by anxiety, stress and job performance pressure. Appellant stopped work on May 30, 1997. His claim was accompanied by factual and medical evidence.

By letter dated July 25, 1997, the Office of Workers' Compensation Programs advised the employing establishment to submit factual evidence regarding appellant's claim. By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office then advised him to submit additional factual and medical evidence supportive of his claim.

By decision dated September 22, 1997, the Office found the evidence of record insufficient to establish that appellant's stroke was caused by factors of his employment. In an October 6, 1997 letter, appellant requested an oral hearing before an Office representative accompanied by factual evidence.

Subsequent to the April 9, 1998 hearing, appellant submitted additional factual and medical evidence.

By decision dated June 4, 1998, the hearing representative modified in part and affirmed in part the Office's September 22, 1997 decision.[1]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[2]

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[3] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[4]

In the present case, appellant has alleged that he sustained a stress-related condition as a result of a number of employment incidents. Specifically, he has alleged that his filing of grievances regarding the employing establishment's denial of his request for union

[1] The Board notes that subsequent to the hearing representative's June 4, 1998 decision, appellant submitted additional evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1).

[2] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

[3] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Margaret Krzycki*, 43 ECAB 496, 501-02 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

representation and overtime and issuance of letters of warning regarding his use of unauthorized overtime and failure to be in regular attendance by the employing establishment, caused his stroke.[5] Further, appellant has alleged that he was verbally harassed by his supervisor, who threatened to terminate his employment. His filing of the above grievances concerning the employing establishment's denial of his request for union representation and overtime[6] and disciplinary actions,[7] relate to administrative actions of the employing establishment. As a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.[8] absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.[9] Furthermore, an employee's complaints about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.[10] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11] To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.[12]

Appellant's grievance regarding the employing establishment's denial of his request for union representation indicated that this denial was unreasonable and in violation of certain step four decisions dated November 13 and December 2, 1977. He, however, has failed to submit any evidence establishing that the employing establishment's denial was deemed unreasonable and violated certain decisions.

Concerning appellant's grievance for the denial of his request for overtime, Mike Ables, an employing establishment customer service supervisor, provided in an August 2, 1997 statement that appellant was on the overtime desired list and that he had always requested additional time. He noted that other city carriers were on the overtime list and worked additional hours. Mr. Ables further noted that the overtime list was entirely voluntarily and that carriers could pull their names off the list at any time. Although overtime work was voluntary,

[5] The Board notes that several of appellant's additional grievances are illegible.

[6] *Peggy R. Lee*, 46 ECAB 527, 534 (1995); *David F. Cianiolo*, 45 ECAB 731 (1994); *Jeffrey S. Miller*, 41 ECAB 707 (1990).

[7] *Barbara E. Hamm*, 45 ECAB 843 (1994).

[8] 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

[9] *Gregory N. Waite*, 46 ECAB 662 (1995).

[10] *Daniel B. Arroyo*, 48 ECAB 204 (1996).

[11] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[12] *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

appellant's grievance indicated that Mr. Farrio denied his grievance because "management has the right to approve or disapprove overtime." There is no evidence of record establishing that Mr. Farrio committed error or abuse in exercising his supervisory discretion in denying appellant's request for overtime.

The record reveals that a September 7, 1993 letter of warning issued by the employing establishment regarding appellant's failure to be regular in attendance was reduced to an official discussion on March 11, 1994 in recognition of improvement in the area of attendance. The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.[13] Appellant has failed to establish that Mr. Farrio abused his supervisory discretion in issuing the letters of warning.

In support of his contention that he was threatened with termination by his supervisor, appellant submitted a September 16, 1996 statement signed by two coworkers, G. Habeeb and O. Hunt indicating that on August 14, 1996 they heard Mr. Farrio tell appellant that he could lose his retirement if he fired him. Although he has established that Mr. Farrio made the statement, appellant has failed to establish that Mr. Farrio committed error or abuse in making the statement. Further, he has failed to submit any evidence establishing that Mr. Farrio's statement constituted harassment. The record reveals that appellant had been warned about his use of unauthorized overtime and his failure to be in regular attendance. Inasmuch as there is no evidence of record establishing that the employing establishment committed error or abuse in handling any of the above administrative matters, the Board finds that appellant has failed to establish a compensable employment factor under the Act.

The Office properly found that the counting of appellant's mail constituted a compensable employment factor under the Act which arose in the performance of appellant's employment duties. This event is established as having occurred by evidence present in the case record and by its nature, arises out of and in the course of appellant's assigned duties.

Although appellant has established a compensable employment factor, he failed to provide any medical evidence establishing that his stroke was related to the factor. A December 4, 1968 certificate of medical examination from Dr. Laurance J. Clark, Jr., revealed findings of appellant's physical and eye examination. Similarly, a physical fitness inquiry for motor vehicle operators signed on August 18, 1989 by Dr. George Garrett and on August 31, 1989 by Dr. Timothy D. Estes, whose specialty is in emergency medicine, revealed findings of appellant's physical and eye examination. The medical reports of Drs. Clark and Garrett were completed prior to the date of appellant's stroke and failed to address whether appellant's stroke was caused by the accepted employment factor. Therefore, these medical reports are insufficient to establish appellant's burden.

In a June 4, 1997 consultation report, Dr. Salil C. Tiwari, a Board-certified internist, provided a history of appellant's injury, medical treatment and family and social background. He also provided findings on physical examination and diagnoses of new-onset left subcortical stroke affecting the internal capsule, old right subcortical stroke affecting the left lower limb,

[13] *Mary L. Brooks*, 46 ECAB 266, 274 (1994).

hypertension, anemia and arthritis. Dr. Tiwari noted appellant's future medical treatment and concluded that appellant suffered from small vessel disease which was associated with his hypertension. He failed to address whether appellant's conditions were caused by the accepted employment factor. Therefore, his report is insufficient to establish appellant's burden.

A June 4, 1997 report prepared by someone whose signature is illegible provided the results of a magnetic resonance image (MRI) scan of the cerebral vessels. Specifically, this report revealed focal increased signal of the pons on the right which could represent an area of acute infarction. The report further revealed that no more abnormalities were demonstrated. Additionally, the report revealed MRI angiography findings of that were normal. This report is insufficient to establish appellant's burden because it failed to address a causal relationship between appellant's condition and the accepted employment factor.

The June 5, 1997 discharge summary of Dr. J. Russell Barnes, a Board-certified family practitioner, provided his findings on physical and objective examination, appellant's medical treatment and Dr. Tiwari's diagnosis of small left subcortical stroke. He failed to address whether appellant's stroke was caused by the accepted employment factor, thus, it is insufficient to establish appellant's burden.

Dr. Barnes' June 24, 1997 duty status report (Form CA-17), indicated the date of injury as May 30, 1997 and a diagnosis of cardiovascular and right-sided weakness. He also provided that appellant was unable to perform certain physical restrictions at the present time and that appellant's diagnoses were not due to the injury. In a medical report of the same date, Dr. Barnes indicated the date of injury as May 31, 1997 and a diagnosis of cardiovascular accident and hypertension. He further indicated that appellant's condition was not caused or aggravated by employment activity by placing a checkmark in the box marked "no." Dr. Barnes' July 22, 1997 Form CA-17 revealed the date of appellant's stroke, physical restrictions and findings of right-sided weakness. He indicated that the question whether appellant's diagnosis was due to the injury was not applicable.

Inasmuch as appellant has failed to provide any rationalized medical evidence establishing that his stroke was caused by the counting of his mail which constituted an acceptable employment factor under the Act, the Board finds that appellant has failed to satisfy his burden of proof.

The June 4, 1998 and September 22, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
March 15, 2000

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member