U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT L. BARNES, SR. and U.S. POSTAL SERVICE, POST OFFICE, Maywood, CA

Docket No. 98-1892; Submitted on the Record;
Issued May 1, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his employment.

On July 16, 1997 appellant, then a 59-year-old custodial laborer, filed a claim for an emotional condition, which he first realized was caused or aggravated by his employment on June 9, 1997. He indicated that he first became aware of his condition on March 1, 1993. Appellant alleged that he was threatened in March 1993 by a coworker; that he was harassed on July 24, 1996 when he was asked by supervisors to state the time required for wax to dry; that he was a threat to himself and to others; that the employing establishment acted erroneously or abusively in issuing suspensions, in denying appellant's request for leave on March 28, 1997, in denying him promotions, in issuing a letter of warning for unacceptable conduct, which was later rescinded, in the handling of appellant's May 23, 1994 request for reassignment and the failure to post a job opening on July 24, 1996; that he received insufficient training to perform his position, that his hours were reduced so that the postmaster could offer a position to a friend, that the distance of his daily commute to work exceeded 180 miles; and that the employing establishment retaliated against him for filing Equal Employment Opportunity Commission (EEOC) complaints.

In a written statement, the employing establishment provided information regarding the incidents and situations at work alleged by appellant to be the cause of his emotional condition. The employing establishment stated that appellant resented being given instructions, sometimes became loud and angry but was never threatening, that he was hired to work part time, that he received the same training as other custodians, that disciplinary actions had been taken for failure to document overtime, report a basement flood, follow instructions and adhere to his work schedule, that appellant was treated the same as any other employee, that he was asked how long it took wax to dry in order to determine whether he could perform specific duties in the allotted times; and that there had been some nonphysical confrontations between appellant and another employee but the situations were resolved by management and appellant did not file

complaints or claims at the time of these incidents. The employing establishment denied any error or abuse in regard to all of appellant's allegations. The employing establishment also noted that appellant chose to move to a town, which was a greater distance from his duty station.

By decision dated January 22, 1998, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits.[1]

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] 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]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[4] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[5]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[6] If a claimant does implicate a factor of

[1] The Board notes that appellant filed an appeal of the Office's January 22, 1998 decision to the Board on May 18, 1998 and, while the appeal was pending, the Office issued decisions dated July 7 and October 29, 1998 in which it denied appellant's requests for an oral hearing and reconsideration. As these decisions were issued while the appeal with the Board was pending, the decisions are null and void; *see Douglas E. Billings*, 41 ECAB 880 (1990). The Board also notes that it has no jurisdiction to consider the evidence submitted after the Office's January 22, 1998 decision; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[5] *Effie O. Morris*, 44 ECAB 470, 473 (1993).

[6] *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

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.[7]

Regarding appellant's allegations that the employing establishment took unfair disciplinary actions, wrongly denied requests for leave and mishandled the posting of a job announcement, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[8] Although these matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[9] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[10] In this case, the record shows that the employing establishment rescinded a letter of warning to appellant. However, the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[11] The employing establishment has denied error or abuse in the handling of this matter and the other allegations regarding administrative or personnel matters and there is insufficient evidence of record to support appellant's allegations of error or abuse. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation of denial of promotions and a request for reassignment and his supervisors questioning him about the length of time it took for him to perform specific tasks such as waxing, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[12] Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers, including retaliation for filing EEOC complaints, contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment

[7] *Id.*

[8] *See Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[9] *Id.*

[10] *Id.*

[11] *Id*.

[12] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

factors.[13] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[14] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.[15] Appellant has provided no corroborating evidence, such as witness statements, to establish that he was harassed or discriminated against by supervisors or coworkers.[16] Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has alleged that he was threatened in March 1993 by a coworker. An altercation between coworkers, which arose out of a claimant's regularly or specially assigned duties would be considered an employment factor, but an altercation, which arose out of nonemployment factors would not be considered an employment factor. In this case, appellant has provided insufficient information regarding this alleged incident.[17] Therefore he has not established a compensable factor of employment in this regard.

Regarding appellant's complaint regarding his daily commute to work exceeding 180 miles, the Board has noted that the stress and strain of highway travel experienced by an employee could be characterized as self-generated and arising from hazards of the journey shared in common by all travelers.[18] Appellant's actual employment duties did not require him to travel on the highways.

Regarding appellant's allegation that he was a danger to himself and others, this allegation does not relate to his regular or specially assigned duties and is not deemed a compensable factor of employment.

Regarding the allegation that the postmaster reduced appellant's work hours so that he could offer a position to a friend, there is insufficient evidence of record to substantiate this allegation and it is not, therefore, deemed a compensable factor of employment.

Regarding the allegation that sufficient training was not provided, the employing establishment stated that appellant received the same training for his position as other custodians and appellant has not provided sufficient evidence that he received insufficient training. Therefore, he has not established a compensable factor of employment in this regard.

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[13] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[14] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[15] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[16] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[17] *See Irene Bouldin*, 41 ECAB 506, 514 (1990).

[18] *See Adele Garafolo*, 43 ECAB 169, 172 (1991).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[19]

The January 22, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 1, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[19] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 6.