U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HORACE L. WILLIAMS and U.S. POSTAL SERVICE, CENTRAL STATION, Irving, TX

Docket No. 98-1974; Submitted on the Record;
Issued May 9, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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 he sustained an emotional condition in the performance of duty.

On July 18, 1995 appellant, then a 33-year-old distribution window clerk, filed a claim for an occupational disease (Form CA-2) alleging that he first realized that his emotional condition was caused or aggravated by his employment on December 10, 1994. Appellant's claim was accompanied by factual and medical evidence.

By letter dated March 28, 1996, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office then advised appellant to submit additional factual and medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit additional factual evidence regarding appellant's claim.[1]

In a memorandum dated April 18, 1996, the employing establishment responded to the Office's request. By letter dated May 15, 1996, appellant submitted additional factual and medical evidence.

By decision dated July 24, 1996, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In an August 1, 1996 letter, appellant requested an oral hearing before an Office representative.

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[1] In an undated memorandum to the file, an Office claims examiner indicated that the March 28, 1996 letters to appellant and the employing establishment had been returned. The Office reissued these letters on April 12, 1996.

By decision dated March 20, 1998, the hearing representative affirmed the Office's decision.

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.[2]

Perceptions and feelings alone are not compensable. 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 factors of his federal employment.[3] To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[4]

Appellant has alleged that his emotional condition was caused by harassment from the employing establishment. Specifically, appellant alleged that on December 10, 1994[5] Avtar Shori, appellant's coworker, snatched a package from him and told him how to deliver the package. Appellant then stated that he became angry and told Mr. Shori that he was not his supervisor, that he knew how to perform his job and to stop snatching things. Appellant further stated that he called for a supervisor to come to the area and that when Kay Vaughn, an employing establishment supervisor, came to the area she yelled at him to go into the office. Appellant stated that he refused to go into the office. Appellant also stated that Jerry Long, an employing establishment station manager, arrived and he tried to explain the situation to him, but Mr. Long was only interested in getting him off the clock. Appellant also alleged that he was harassed by Mr. Long and his coworkers after he successfully bidded on a position.

Appellant has further alleged racial discrimination by the employing establishment. In an undated statement to the Office hearing representative, appellant's union representative, Jo Ann

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

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

[4] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[5] Appellant actually alleged that the incident involving Mr. Shori took place on December 10, 1995. However, the record indicates that the incident took place on December 10, 1994.

Williams, indicated that, when appellant returned to work several days later for one hour following the December 10, 1994 incident, Mr. Long placed him off the clock. Ms. Williams stated that appellant was discriminated against by the employing establishment because other employees including, Mr. Shori, Mike Boyd, Diane Poole, Bob Lowery and David Lee, were not disciplined when they disrupted the workplace.

The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act.[6] Mere perceptions alone of harassment and discrimination are not compensable under the Act.[7] To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment and discrimination with probative and reliable evidence.[8] The specific allegations made by appellant in this do not establish a pattern of harassment or discrimination by the employing establishment.

In response to appellant's allegation that he snatched a package from his hand, Mr. Shori stated that he showed appellant how to mark a package so that it would be delivered rather than repeatedly returned. Mr. Shori further stated that appellant thanked him for the help. He also stated that, while he was working, appellant shouted "you are not my supervisor" and to leave him alone. Mr. Shori responded he did not say anything and appellant screamed that he snatched a package from him and to leave him alone. He noted that appellant screamed close to his face and that appellant refused to go into the office.[9] In a December 10, 1994 narrative statement, Diana Charvica, an employing establishment employee, provided that she did not see Mr. Shori take a package from appellant's hand, but she witnessed appellant yelling at Mr. Shori and appellant's refusal to go into the office. A December 14, 1994 narrative statement from Shirley McDonald, an employing establishment employee, indicated that she witnessed the December 10, 1994 incident and that she had previously seen appellant get mad and yell. Ms. McDonald stated that she did not want appellant to return to work until he received medical treatment because she did not feel safe. Ms. Poole's September 17, 1997 narrative statement indicated that she worked with Mr. Shori and that he told her where things belonged and sometimes he would take the mail to look at it. Inasmuch as Mr. Shori has denied appellant's allegation that he snatched a package from appellant, Ms. Charvica and Ms. Poole did not witness Mr. Shori take the package from appellant and Ms. Charvica and Ms. McDonald witnessed appellant yelling at Mr. Shori, the Board finds that appellant has failed to establish that he was harassed by Mr. Shori on December 10, 1994.

Regarding the incident involving appellant and Ms. Vaughn on December 10, 1994, Linda J. Christopherson, an employing establishment employee, indicated in a December 26,

[6] *Donna Faye Cardwell*, *supra* note 4; *Pamela R. Rice*, *supra* note 3.

[7] *Wanda G. Bailey*, 45 ECAB 835 (1994); *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

[8] *Ruthie M. Evans*, *supra* note 7.

[9] The record reveals several narrative statements from appellant's coworkers regarding appellant's screaming fits and irrational behavior while working at the employing establishment.

1994 narrative statement that she witnessed this incident between appellant and Ms. Vaughn. Ms. Christopherson stated that, on the Monday following the incident, she asked the clerks Diane and Shirley how they were and they responded tied in knots since appellant had showed up that morning. Ms. Christopherson then stated that she spoke with the Postmaster about getting help for appellant and security for the clerks. A January 12, 1995 narrative statement from Cynthia Y. Martin, an employing establishment employee, revealed that she did not hear what started the trouble between appellant and Ms. Vaughn the morning that appellant was put off the clock, but that she did hear Ms. Vaughn yelling at appellant to get into her office now. Ms. Martin's statement further revealed that Ms. Vaughn had a knack for escalating a bad situation and that in the past Ms. Vaughn had screamed at her and had even snatched a note she had written for Mr. Long from her hand. A transcript of appellant's hearing involving his discrimination complaint filed with the Equal Employment Opportunity Commission (EEOC) revealed the testimony of Randy Wright, appellant's coworker. Mr. Wright testified that Ms. Vaughn was yelling at appellant. Ms. Vaughn's calling to appellant involves an administrative matter. An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.[10] Ms. Vaughn's testimony at the EEOC hearing revealed that she tried to get appellant to the office and off the workroom floor but appellant refused. Ms. Vaughn also testified that appellant's coworkers stated that they were afraid and did not want to be on the workroom floor at that time. While the evidence submitted to the record may establish that Ms. Vaughn spoke to appellant in a raised voice, it does not establish error or abuse on the part of the employing establishment. Therefore, appellant has failed to establish a compensable employment factor under the Act.

Appellant has failed to submit evidence to corroborate his allegation that he was harassed by Mr. Long and his coworkers after he successfully bidded on a position. Thus, the Board finds that appellant's allegation is not established as having occurred by evidence present in the case record.

Concerning appellant's allegation of discrimination by the employing establishment, an August 12, 1996 EEOC decision found that appellant had established a *prima facie* case of discrimination due to the employing establishment's act of placing him off the clock but that appellant had failed to establish that the employing establishment's legitimate and nondiscriminatory reasons for its actions were a pretext for discrimination.[11] The EEOC decision recommended a finding of no discrimination. Because there is no finding of discrimination or admission of error with respect to appellant's complaint the Board is unable to find sufficient evidence of record establishing discrimination in the matter alleged. The Board finds that the evidence relating to appellant's EEOC complaint is not sufficient to establish discrimination, or otherwise establish a compensable factor of employment under the Act.

[10] *See Sharon R. Bowman*, 45 ECAB 187 (1993).

[11] Based on the EEOC decision, the employing establishment placed appellant off the clock because he had become very agitated and loud, employees were scared and appellant refused to leave the workroom floor until Mr. Long arrived. The decision also revealed that appellant was not disciplined for his actions.

In an undated statement, Ms. Williams has alleged that appellant was placed in an emergency leave status, which was later changed to sick leave status without appellant's consent. This allegation involves an administrative or personnel matter. In a December 22, 1994 memorandum, the employing establishment provided that, as a result of pregrievance discussions, there was mutual agreement between itself and the union to full settlement of appellant's case. The agreement further provided that appellant was permitted to use sick leave from December 17, 1994 until his release from medical care. A February 15, 1995 narrative statement from Kim Lewis, an "LRS", revealed that appellant's wife Joann Taylor, told her that appellant wanted the agreement honored regardless of his EEOC complaint. Because the settlement agreement did not indicate that the employing establishment committed error or abuse in handling the change in appellant's leave status, the Board finds that appellant has failed to establish a compensable employment factor under the Act.

Appellant has contended that on May 10, 1995 he was ordered by a "T6" employee to take lunch at a time other than his regular time involves an administrative and personnel matter. Appellant stated that this employee later told him that he was supposed to immediately do as he told him with no questions. In a May 9, 1996 response to the Office's March 28, 1996 request to submit additional supportive factual and medical evidence, appellant stated that the employee was Raj Shori, Mr. Shori's brother. In a July 24, 1995 response to appellant's allegation, the employing establishment stated that the "T6" employee, Mr. Shori, was responsible for rescheduling lunches and breaks when the window traffic was heavy or a scheduled employee was off from work. Appellant has failed to submit any evidence establishing that Mr. Shori committed any error or abuse in rescheduling appellant's lunch break. Therefore, appellant has failed to establish a compensable employment factor under the Act.

Appellant has also contended that he would receive instructions from his first-line supervisor, Mike Brown and then receive contrary instructions from other employing establishment supervisors. Appellant has not submitted evidence to support this allegation. Therefore, the Board finds that appellant's allegation is not established as having occurred by evidence present in the case record.

Appellant has further contended that he was overworked by the employing establishment in that he had to perform his coworkers' job duties. Specifically, appellant alleged that, on May 26, 1995, Mr. Brown asked him to do the hot cast when he punched back in from lunch. Appellant stated that, since he did not want to do Ms. Choi's job, he asked Mr. Brown if he could extend his lunch because Mr. Brown did not ask someone junior to him to perform the task. Appellant indicated that he returned to close out his window around 6:00 p.m. Appellant further indicated that he drove around and came back to the employing establishment at 7:00 p.m. Appellant stated that he was unable to go home due to his unresolved feelings about his work situation. Appellant also stated that an employee called his supervisor who picked up his wife to take him home. While a heavy work load may constitute a compensable factor of employment, there must be sufficient evidence to substantiate an allegation of overwork.[12] To the extent that appellant may be alleging he was overworked as a result of performing the job duties of his coworkers, he must submit additional factual detail and other evidence supporting

[12] *Sandra F. Powell*, 45 ECAB 877 (1994); *Frank A. McDowell*, 44 ECAB 522 (1993).

that he was overworked.[13] Appellant has not done so in this case. The Board finds that appellant has not established a compensable factor of employment with respect to his performance of his coworkers' job duties.

Additionally, appellant has contended that on or about May 23, 1995[14] he noticed an Asian man who frequently purchased a large amount of money orders. Appellant stated that he suspected the man of laundering money and reported his suspicion to the station manager, Chris Murphy. Appellant further stated that the "DMM" told the window clerks to watch for such purchases. Appellant then stated that Mr. Murphy called the postal inspectors and that he followed the instructions given to him. Additionally, appellant stated that he was concerned about his safety because he had reported the customer. Appellant noted that several days later, the same man came to his window and made a gesture, which made him very nervous and uneasy. Appellant then stated that he thought this man may harm him or his family. In its July 24, 1995 response to appellant's allegation, the employing establishment stated that a man did purchase money orders but that he did so on Friday, April 21, 1995 rather than May 23, 1995. The employing establishment further stated that neither appellant nor any other employee reported seeing the man again. The Board finds that the above allegation is established as having occurred by evidence present in the case record and by its nature, it arises out of and in the course of appellant's assigned duties, thus, appellant has established a compensable factor of his employment under the Act.

Similarly, the Office properly found appellant's allegation that the employing establishment's denial of his August 27, 1995 request for part-time work based on the restrictions and limitations noted by his physician in a duty status report (Form CA-17) constituted a compensable employment factor.[15] An EEOC decision dated September 24, 1997 found that the employing establishment discriminated against appellant in denying his request for part-time work, thus, violating the Rehabilitation Act of 1973.

Appellant's burden of proof, however, is not discharged by the fact that he has established employment factors, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[16]

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[13] *Id.*

[14] In a narrative statement accompanying his response to the Office's request, appellant indicated that, on May 29, 1995, he believed that a man and a woman, who wanted to buy money orders in the amount of $3,000.00, were laundering money.

[15] *See Lizzie McCray*, 36 ECAB 419, 421 (1985) (stating that the alleged refusal, if proven, of the employing establishment to honor requests from the employee's physician for light duty due to medical conditions unrelated to her employment is deemed as compensable factors of employment).

[16] *William P. George*, 43 ECAB 1159, 1168 (1992).

The medical evidence of record in the instant case fails to establish that appellant's emotional condition was caused by the accepted compensable employment factors. Appellant submitted a May 15, 1985 employing establishment fitness-for-duty medical report of Dr. James M. Kelley, an internist, revealing the functional requirements and environmental factors of his position as a distribution window clerk. His report further revealed that appellant was medically capable of performing the duties of the position noting appellant's physical restrictions due to bilateral indirect inguinal hernias. Dr. Kelley's medical report is insufficient to establish appellant's burden because it did not address the issue whether appellant had an emotional condition causally related to the accepted employment factors.

Appellant also submitted a February 9, 1995 medical report of Dr. John Talmadge, a Board-certified psychiatrist, revealing that he was a patient at Horizon Recovery Center with an admitting diagnosis of bipolar disorder. Dr. Talmadge stated that appellant was discharged with a good prognosis and that he may return to work. A June 15, 1995 medical report of Dr. K. Thomas Varghese, a psychiatrist, provided that appellant had been under his care since December 20, 1994 for the treatment of a psychiatric condition. He noted that appellant had been admitted to a hospital where he would remain until the middle of July. The medical reports of Drs. Talmadge and Varghese are insufficient to establish appellant's burden inasmuch as they failed to address whether appellant's diagnosed emotional condition was caused by the accepted employment factors.

Dr. Varghese's July 19, 1995 attending physician's report (Form CA-20), indicated a date of injury as May 26 and December 10, 1994 and a diagnosis of schizophrenia of a paranoid type with chronic acute exacerbation. Dr. Varghese further indicated that appellant's condition was aggravated by an employment activity by placing a check mark in the box marked "yes." Dr. Varghese explained that appellant's condition was due to multiple stresses related to his work. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[17] Although Dr. Varghese indicated that appellant's emotional condition was caused by stresses at work, he failed to specifically identify the stresses at work that caused appellant's emotional condition. Further, Dr. Varghese failed to provide any medical rationale explaining how or why appellant's condition was caused by the stresses at work. Thus, his medical report is insufficient to establish appellant's burden.

In a July 27, 1995 attending physician's supplemental report (Form CA-20a), Dr. Talmadge revealed a date of injury as December 10, 1994 and a diagnosis of schizophrenia of a paranoid type that was chronic with acute exacerbations. Dr. Talmadge indicated that appellant's present condition was due to the injury for which compensation was claimed by placing a check mark in the box marked "yes." Dr. Talmadge's August 18, 1995 Form CA-20a, indicated May 26 and December 10, 1994 as the date of injury and a diagnosis of chronic schizophrenia of a paranoid type. Dr. Talmadge again indicated that appellant's present condition was due to the injury for which compensation was claimed by placing a check mark in

[17] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

the box marked "yes." He also indicated that appellant had difficulty handling and tolerating stressful situations and that he would have relapses if he was subjected to pressure. In his September 1, 1995 Form CA-20a, Dr. Talmadge reiterated his findings as set forth in his August 18, 1995 Form CA-20a. Dr. Talmadge's September 21, October 3 and 26, November 20 and December 5, 1995 and January 4, February 6 and March 3, 1996 Forms CA-20a referred to his previous Form CA-20. Inasmuch as Dr. Talmadge failed to provide any medical rationale to support his opinion regarding causation, his medical reports are insufficient to establish appellant's burden.[18]

In a May 10, 1996 medical report, Dr. Varghese opined that appellant had a psychotic disorder that was being treated with medication and that appellant was functioning at a level of being able to attend to his daily duties at work and home prior to the decompensation that brought him to his office on December 20, 1994. Dr. Varghese noted that, based on information provided by appellant's family, appellant was subjected to duress and fear, which "probably" could have triggered that psychotic episode. He further noted that appellant was released to return to work on August 18, 1996 after his office visit, but that the delay caused by the employing establishment's refusal to put him back to work for another seven months had been a source of anxiety for appellant. Dr. Varghese concluded that appellant was capable of performing his job duties if he was not subjected to undue pressure or frequent changes. He recommended that appellant be placed in a consistent and stable work environment so that he could maintain his remission from his psychotic disorder with the help of medication. Dr. Varghese failed to provide any medical rationale explaining how or why the employing establishment's refusal to put appellant back to work caused his emotional condition. Therefore, his medical report does not establish appellant's burden.

In an accompanying discharge summary report, Dr. Varghese indicated that appellant was admitted to the hospital on May 29, 1995 as an inpatient and to a partial day program on July 2, 1995. Dr. Varghese further indicated that appellant was discharged as an inpatient on July 1, 1995 and on July 17, 1995 from the partial day program. Dr. Varghese noted a discharge diagnosis of Axis I schizophrenia of a paranoid type that was chronic with acute exacerbation. Dr. Varghese further noted no diagnosis for Axis II, no acute illness for Axis III, mild for Axis IV and 60/60 for Axis V. Dr. Varghese also noted a history of appellant's psychiatric condition and medical treatment. He provided his findings on mental and objective examination and appellant's future medical treatment. Dr. Varghese failed to address whether appellant's emotional condition was caused by the accepted employment factors. Therefore, his medical report is insufficient to establish appellant's burden.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that his emotional condition was caused by the accepted employment factors, he has failed to satisfy his burden of proof in this case.

The March 20, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

[18] *Id.*

Dated, Washington, D.C.
May 9, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member