U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE M. HERRMANN and U.S. POSTAL SERVICE,
POST OFFICE, West Covina, CA

Docket No. 99-1368; Submitted on the Record;
Issued November 17, 2000

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

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

The Board finds that appellant has failed to meet his burden of proof in establishing 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 employing establishment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] 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.[2]

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.[3] This burden includes the submission of a detailed

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[1] 5 U.S.C. §§ 8101-8193.

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

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

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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.[5] 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.[6]

In this case, appellant, then a 46-year-old supervisor of customer service, filed an occupational disease claim on March 23, 1996 alleging that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated September 6, 1996, the Office denied his emotional condition claim on the grounds that appellant had not submitted sufficient factual and medical evidence to support his claim. Appellant requested an oral hearing, which was held on May 27, 1997.

In a decision dated November 12, 1997 and finalized on November 13, 1997, an Office hearing representative denied appellant's claim on the grounds that he had not established any compensable employment factors. Appellant requested reconsideration by letter dated November 5, 1998, and submitted additional arguments and evidence in support of his claim. In a decision dated December 9, 1998, the Office reviewed the merits of the claim and found the newly submitted arguments and evidence insufficient to establish any compensable factors of employment, and, therefore, insufficient to warrant modification of the prior decision.

The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant stated that he began to feel a build-up of stress in 1988, when he was detailed to the Upland Post Office, where there were problems with morale and production. He had no seniority at this location, he was assigned to supervise all the most troublesome and nonproductive employees, which caused daily confrontations with letter carriers and union representatives, and grievances were filed against him. In addition, throughout this stressful and "cut throat" time he did not receive any support from upper management. Appellant stated that despite these circumstances, he felt that he was able to get his unit into good shape and because of his success he was asked by upper management to extend his detail.

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

Later in 1989, a new postmaster and superintendent of postal operations were assigned to Upland and tried to run the unit in a manner different from his. Appellant stated that the postmaster and superintendent had an obvious long-standing bond between them, having worked together before and that he felt he no longer had any influence as a supervisor. Shortly thereafter, appellant began experiencing periodic losses of consciousness due to hypertension and was taken off work for three weeks, but did not file a claim for compensation for this period. While he was on leave he was notified that he was being returned to his former office in West Covina, where he worked until 1992 without incident.

In 1992 he was detailed to the Azusa Post Office as acting superintendent of postal operations. Appellant stated that from the first day he did not get along with the acting postmaster, who constantly asked him to explain his decisions and undermined his authority, taking away all his power and influence. Finally, when the acting postmaster asked him to run a carrier unit, a duty he did not wish to perform, he asked to return to West Covina in December 1992.

While appellant felt that his prior stressful experiences at Upland and West Covina were catalysts for his subsequent problems at West Covina, he attributed his current disabling depression to four specific occasions when he was harassed by Mark Granger, the new postmaster of the West Covina station. Appellant stated that his first conflict with Mr. Granger occurred in March 1993, shortly after Mr. Granger arrived at the station. Appellant stated that a customer wanted a parcel to be delivered before 5:00 p.m. and although he gave the parcel to a carrier for immediate delivery, it was not delivered in time. As a result, Mr. Granger confronted him and snapped at him, demanding to know why the parcel was not delivered as promised and chastised appellant when he did not like the explanation appellant gave. Appellant stated that he immediately sensed a personality conflict between himself and Mr. Granger. Appellant found it difficult to work for Mr. Granger because of his autocratic manner and lack of respect towards appellant.

Appellant also asserted that he had a confrontation with Mr. Granger on November 30, 1993. He was late for work due to heavy traffic and was busily trying to perform several urgent tasks when Mr. Granger demanded the penalty overtime report. Appellant stated that when he told Mr. Granger he was busy and had not had a chance to prepare the report, Mr. Granger snapped at him and demanded the report by 10:00 a.m. Appellant stated that he immediately started feeling light headed and had to be taken to the emergency room.

Appellant also attributed his condition to an encounter with Mr. Granger on October 27, 1994, when Mr. Granger admonished him for not spending enough time out on the workroom floor. Mr. Granger wanted appellant to begin his shift later, so that he could remain at work later to supervise the carriers returning to the station. He felt that supervising returning carriers was the responsibility of another person in the unit and that it was unfair that he should be asked to perform this duty. An argument ensued and Mr. Granger told appellant to do as he was told. Appellant stated that when he left for home that evening he was feeling very stressed over the argument and after an hour of driving was involved in a motor vehicle accident. He asserted that he felt his argument with Mr. Granger was at least partly to blame for this collision.

Appellant's final confrontation with Mr. Granger occurred on August 31, 1995. Appellant stated that Mr. Granger wanted to know why the restrooms, especially the baseboards and corners, had not been properly cleaned. When appellant, who was in charge of the restroom custodians, responded that he would start initiating corrective action, Mr. Granger said he wanted appellant to inspect the restrooms personally three times a day. Appellant told Mr. Granger that he was being unfair, that he did check the restrooms and felt they were clean by his standards, and that he did not have time in his busy day to keep checking the restrooms.

Appellant stated that Mr. Granger then bolted around his desk and got directly in front of him, blocking the exit from the office. He alleged that Mr. Granger stood a couple of inches from his face, with teeth and fists clenched, and at that moment appellant thought Mr. Granger was going to strike him. Appellant stated that Mr. Granger snapped, "Look, I [a]m getting tired of your [expletive deleted]. Just do what you [a]re told!" Appellant stated that he responded: "You can [no]t talk to me like that. Maybe we [a]re getting tired of yours also" and proceeded out the door very shaken and demoralized by Mr. Granger's actions.

Appellant stated that he then felt too stressed out to work and filled out the necessary paperwork to go home. As he was leaving, Mr. Granger approached him and apologized for his actions. Appellant stated that he did not feel Mr. Granger was truly remorseful because he called appellant at home the next morning and requested documentation for his absence. Appellant did not return to work after the August 31, 1995 incident, and resigned from the employing establishment effective January 4, 1997.

In a narrative statement dated April 12, 1996, Mr. Granger confirmed that on August 31, 1995 a heated argument ensued between himself and appellant over the cleanliness of the restrooms. Mr. Granger stated:

> "I asked him was there a problem with the custodians; his response was that he was going to start issuing discipline to the custodial staff. I explained to him that I did n[o]t feel that discipline alone was the appropriate response, unless he had made previous efforts to correct the problem. I asked him what he had done thus far to ensure the custodians fulfilled their job duties. He became agitated at this point and informed me that he had other duties and responsibilities. I told him it was my job to establish the priority in which the duties were to be accomplished. I explained to [appellant] that it would be necessary for him to realign his priorities. I informed him that I was instructing him to inspect the restrooms and lunchroom at least twice daily to ensure their cleanness. At this point [appellant] turned red, stood up and approached me and raised his voice insisting that he did n[o]t have time to go into restrooms. At this point I stood up and moved away from behind my desk, not wishing to be trapped in my office. I positioned myself so that I would be able to make an exit if necessary. [Appellant] continued with his angry dialogue, expressing that he did n[o]t have time to do his job and that he was n[o]t going to check the restrooms. I was unaware of [appellant's] intentions and stepped close enough to him to keep him from either drawing a weapon or taking a swing at me. At no time did I touch or threaten [appellant]. I did tell him in the calmest voice I could muster that I was sick and tired of his [expletive deleted] excuses. [Appellant] seemed to snap back to reality and assumed a less

hostile position and lowered his voice. At that time I stepped to the side and he exited my office. I later approached [appellant] and extended my hand to him in an attempt to get things back on track. [Appellant] shook hands and left."

With respect to appellant's general clashes with upper management at Upland and Azusa, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[7]

Regarding the four encounters with Mr. Granger, the Board has held that to the extent that disputes and incidents alleged as constituting harassment by coworkers and supervisors are established as occurring and arising from appellant's performance of his regular or specially assigned duties, these could constitute employment factors.[8] Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment.[9]

In this case, however, appellant did not provide any witness statements or other corroborative evidence to support his assertion that he was verbally abused by Mr. Granger on any of the occasions he discussed. He asserts that several of the incidents are corroborated by the medical reports of record. However, these reports confirm only appellant's physical and emotional responses to events that occurred on those days. They do not constitute corroborative evidence that Mr. Granger acted abusively towards appellant.[10] In addition, the Board has held that an employee's complaints concerning the manner in which his supervisor performed his duties or in which he exercised his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.[11] Further, reactions to oral reprimands are generally not compensable.[12]

With respect to the specific events of August 31, 1995, Mr. Granger acknowledged that he and appellant were involved in an altercation regarding appellant's responsibility for restroom cleanliness, but he denied that he threatened appellant in any way, and stated that he himself felt threatened when appellant became agitated. The Board finds that the factual evidence shows an allegation directly rebutted, and that the evidence presented by appellant does not constitute probative, reliable evidence establishing abuse or unreasonableness on the part of Mr. Granger.

At best, the evidence establishes that Mr. Granger responded to appellant in a tone at least matching appellant's own. Supervisors must have some discretion in exercising their

[7] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[8] *Christophe Jolicoeur*, 49 ECAB ___ (Docket No. 96-597, issued June 11, 1998); *see Pamela R. Rice*, *supra* note 3.

[9] *Christophe Jolicoeur*, *supra* note 8; *David W. Shirey*, 42 ECAB 783 (1991).

[10] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[11] *Abe E. Scott*, 45 ECAB 164 (1993).

[12] *Joseph F. McHale*, 45 ECAB 669 (1994).

supervisory authority and orally reprimanding an employee in a loud tone of voice is not *per se* abusive.[13] Although appellant perceived Mr. Granger's manner as threatening, such perceptions are not compensable absent evidence establishing error or abuse.[14] The Board finds that the evidence of record concerning this incident is not sufficient to establish error or abuse on the part of Mr. Granger.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.[15]

The decision of the Office of Workers' Compensation Programs dated December 9, 1998 is hereby affirmed.

Dated, Washington, DC
November 17, 2000

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[13] *Tanya A. Gaines*, 44 ECAB 923 (1993) (the claimant did not like the tone of voice or what was said during a discussion with her supervisor; therefore, the Board found no evidence to establish error or abuse).

[14] *Sharon J. McIntosh*, 47 ECAB 754 (1996).

[15] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).