

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES V. WALLER and U.S. POSTAL SERVICE,
POST OFFICE, Evansville, IN

*Docket No. 99-2066; Submitted on the Record;
Issued November 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that he developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

The Board finds that appellant has not met his burden of proof to establish his emotional condition claim, as he has failed to implicate any compensable factors of employment in the causation of his alleged emotional conditions.

To establish that he developed an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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.¹ Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant.²

Workers' compensation law, however, 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 concept of workers' compensation. These injuries occur in the course of employment and have

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Id.*

some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.³ Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁶

When working conditions are alleged as factors in causing 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.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable.

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Donna Faye Cardwell*, *supra* note 1, *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *See Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁷ *See Barbara Bush*, 38 ECAB 710 (1987).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

In this case,¹⁰ appellant alleged that he developed aggravated depression, anger and frustration due to supervisory harassment and mistreatment, supervisory failure to process his claim or provide information regarding it, improper posting of a dayshift position, retaliation for his union involvement, being forced to work as an electronic technician, being scheduled for training, having overtime unfairly withheld, being denied his rights, character assassination, personal vendettas, abuse of management authority, falsification of documents, refusal of leave, and being denied help in filing an Equal Employment Opportunity (EEO) grievance.¹¹ He also alleged that his motorcycle was vandalized twice, that items were stolen from his toolbox and that his paperwork was stolen.

Appellant has not alleged that he developed an emotional condition arising out of his regular or specially assigned duties or out of specific requirements imposed by his employment. He alleged, in large part, that his condition was caused by supervisory harassment and mistreatment. Appellant, however, failed to submit any coworker or witness statements corroborating any instances of harassment or mistreatment or any other evidence supporting that specific instances of harassment or mistreatment occurred at any specific time or place.

The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹² However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹³

The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of his allegations. Appellant has the burden of establishing a factual basis for his allegations; however, the allegations in question are not supported by specific, reliable, probative and substantial evidence such as corroborating statements from coworkers and have been refuted by appellant's supervisors. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Several of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹⁴ the Board held that an employee's emotional reaction to administrative actions or personnel

¹⁰ Previous claims for emotional conditions were denied on February 17, 1998, August 26, 1996, August 24, 1994, and May 19, 1993 on the bases that appellant failed to implicate any compensable factors of his federal employment in the causation of his emotional conditions. The need to establish compensable factors of employment was discussed in each of these decisions.

¹¹ Concurrent conditions not due to injury were noted to include paranoid personality disorder, obsessive/compulsive personality disorder, recurrent severe major depression and alcohol and marijuana abuse.

¹² *Sylvester Blaze*, 42 ECAB 654 (1991).

¹³ *Ruthie M. Evans*, *supra* note 8.

¹⁴ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel actions established error or abuse by appellant's superiors in dealing with the claimant.¹⁵ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: supervisory failure to provide or process information regarding his claim,¹⁶ improper posting of a dayshift position,¹⁷ having overtime withheld,¹⁸ having to work as an electronic technician,¹⁹ being scheduled for training²⁰ and denial of leave.²¹ He has presented no evidence of administrative supervisory error or abuse in the performance of these actions. In fact, the record contains no finding by any outside authority that management erred or acted abusively in its treatment of appellant.

Appellant also alleged that he received retaliation for union activities.²² However, no evidence supporting this allegation was submitted. Therefore, this is not compensable under the Act.

Appellant further alleged that documents were falsified, that his motorcycle was vandalized twice, that items were stolen from his toolbox, that paperwork was stolen and that nasty notes were left for him on the bulletin board, but he provided no factual evidence to support that any of these incidents occurred as alleged. Therefore, none of these incidents is established as having occurred and is not a compensable factor of employment.

As appellant has failed to implicate any compensable factors of employment, the medical evidence of record need not be considered.

¹⁵ See *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁶ See *Thomas J. Costello*, 43 ECAB 951 (1992); *George A. Ross*, 43 ECAB 346 (1991) (processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties).

¹⁷ See *Ruth C. Borden*, 43 ECAB 146 (1991) (frustration at not being able to get or hold a particular position is not compensable).

¹⁸ *Id.*; see also *William P. George*, 43 ECAB 1159 (1992) (not being permitted to work overtime for a particular period does not constitute a compensable work factor).

¹⁹ *Id.*; see also *Anna C. Leanza*, 48 ECAB 115 (1996) (having to work a position not desired).

²⁰ See *Isabel Apostol Gonzalez*, 44 ECAB 901 (1993); *Joe Ann Warrick*, 43 ECAB 858 (1993) (being required to undergo training is an administrative matter, which, absent error or abuse is not compensable).

²¹ See *Daryl R. Davis*, 45 ECAB 907 (1994); *Diane C. Bernard*, 45 ECAB 223 (1993) (absent evidence of error or abuse, denial of leave is not compensable).

²² See *Dinna M. Ramirez*, 48 ECAB 308 (1997); *Marie Boylan*, 45 ECAB 338 (1994) (union activities are personal in nature and are not compensable factors of employment).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated April 9, 1999 and September 25, 1998 are hereby affirmed.

Dated, Washington, DC
November 2, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member