

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE B. SNAVELY and U.S. POSTAL SERVICE,
POST OFFICE, Largo, FL

*Docket No. 99-1913; Submitted on the Record;
Issued October 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

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

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

On September 19, 1994 appellant, then a 43-year-old letter carrier, filed a notice of occupational disease and claim for compensation, alleging that he suffered from stress, essential hypertension and anxiety attacks, causally related to his federal employment. The employing establishment controverted the claim. Appellant was suspended for irregular attendance for one week commencing September 1, 1994 and did not return to work after that date.

In a decision dated April 20, 1999,¹ the Office of Workers' Compensation Programs denied appellant's claim, finding that appellant had not met the requirements for establishing that he sustained an injury 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

¹ The first decision denying benefits in this case was issued by the Office on November 17, 1994. At appellant's request, a hearing was held on April 13, 1995 and on July 7, 1995, the hearing representative affirmed the denial of benefits. Although there is no timely appeal of this decision in the record, in an Order dated December 13, 1996, the Board noted that the case record had not been received and that, therefore, the case was remanded for reconstruction and proper assemblage of the case record and instructed the Office to protect appellant's appeal rights by issuing an appropriate decision. No action was taken until the Office received a congressional inquiry on July 1, 1998. On April 20, 1999 a decision denying benefits was issued by the Office and this is the decision currently on appeal.

illness has some connection with the employment but nevertheless does not come within the concept of 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

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.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

Furthermore, 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.⁵ 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.⁶

In this case, appellant contends that his emotional condition was caused in part by the alleged harassment he received regarding the amount of sick leave he used. The record indicates that appellant missed time from work for numerous medical appointments.

The employing establishment stated that appellant's absences were excessive and that he did not submit the proper forms to document his use of sick leave. Appellant stated that the employing establishment knew that he suffered from bronchitis, that these medical appointments were necessary, that he was suspended due to his need for these medical appointments and that this caused stress. The Board finds that these allegations are administrative or personnel matters unrelated to appellant's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷

² 5 U.S.C. §§ 8101-8193.

³ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. Dedonato*, 39 ECAB 1260, 1266-67 (1988).

However, the Board has 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.⁸ Appellant has not submitted any evidence that management erred or acted abusively in any specific instance relating to these matters, including the suspension for irregular attendance. Appellant's allegation that he did not like the way management handled these issues, without evidence establishing error or abuse, is not sufficient to establish compensability under the Act.⁹

Appellant also alleged harassment and discrimination on the part of his supervisors. However, these claims are unsubstantiated. According to appellant's own testimony, his union grievances were dismissed when he resigned and his Equal Employment Opportunity complaint was dismissed as untimely filed. Mere perceptions of harassment are not compensable under the Act.¹⁰

Finally, the Board finds no corroborating evidence for appellant's allegation that an incident occurred on September 1, 1994, his last day with the employing establishment, when he was assigned to a new route and a supervisor refused to speak to him after telling him to fill out a form requesting help with delivering the mail.

For the foregoing reasons, appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹¹

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

⁹ *Leroy Thomas*, 46 ECAB 946, 952 (1995).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ As appellant has failed to allege a compensable factor of employment substantiated by the record, the medical evidence need not be discussed. See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated April 20, 1999 is affirmed.

Dated, Washington, DC
October 5, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member