

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RODNEY B. REID and U.S. POSTAL SERVICE,
POST OFFICE, London, KY

*Docket No. 98-2564; Submitted on the Record;
Issued September 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, 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 federal employment.

On June 17 and December 22, 1997 and February 27, 1998 appellant, then a 39-year-old clerk, filed an occupational disease claim alleging that he sustained an emotional condition causally related to factors of his employment. In several written statements he attributed his condition to harassment from the employing establishment regarding his ankle and back injuries, being denied sick leave, being denied a request to attend physical therapy sessions during scheduled work hours, having management attempt to coerce him into accepting a job offer, having his work restrictions regarding his back and ankle injuries violated, being closely monitored by his supervisor, being told to talk to other employees only in the break room, being told not to leave the work area unless he needed to use the restroom or the break room, being told to repay continuation of pay wages, which was improperly authorized by a new supervisor and filing grievances and Equal Employment Opportunity Commission (EEOC) complaints

In a memorandum dated December 31, 1997, Don Creekmore, an employing establishment plant manager, denied that anyone at the employing establishment had harassed or discriminated against appellant and that he had only requested information from appellant necessary to process his compensation claims. He stated his opinion that appellant had filed a claim for an emotional condition because he had requested annual leave for the week of December 22 through 26, 1997 on December 16, 1997 and his request was denied. Mr. Creekmore indicated that many employees had requested leave for Christmas week before appellant had submitted his leave request and his request was denied as the work load did not permit the granting of any further requests for leave. He stated that appellant threatened to file claims alleging harassment whenever he did not obtain his leave requests.

In a letter dated April 21, 1997, Mr. Creekmore related that a new supervisor had improperly granted appellant sick leave pay for nonscheduled workdays in December 1997 and

appellant was asked to repay the money because he was not entitled to receive payment for those days.

In a report dated December 5, 1997, Dr. Richard A. Blair diagnosed major depression, dysthymia and chronic pain syndrome but he did not provide his opinion as to the cause of these conditions.

In a letter dated December 15, 1997, Mr. Creekmore stated that on June 4, 1997 he offered appellant a limited-duty job within his physical limitations. He stated that on June 12, 1997 appellant accepted another limited job offer and requested that his work schedule be adjusted to coincide with his physical therapy sessions but that the request was denied. Mr. Creekmore stated that he had made every effort to treat appellant in a fair matter and to honor his work limitations. He denied that appellant had been harassed by anyone at the employing establishment.

By decision dated May 5, 1998, the Office of Workers' Compensation Programs denied appellant's claim for an emotional condition.

By letter dated May 11, 1998, appellant requested reconsideration of the denial of his claim.

By decision dated August 4, 1998, the Office denied appellant's claim.

The Board finds that appellant has not met his burden of proof to establish that he sustained an employment-related emotional condition.

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.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

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 the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment wrongly denied leave, unreasonably monitored his activities at work, being told to limit his conversations with other employees to the break room, being told not to leave the work area except for restroom and lunch breaks and being told to repay continuation of pay wages, which had been improperly granted, 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.⁷ Although the handling of such matters is generally related to the employment, these matters are administrative functions of the employer and not duties of the employee.⁸ 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.⁹ In the instant case, there is insufficient evidence of error or abuse in the employing establishment's handling of these administrative matters. 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 contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as

⁴ *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁵ *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

⁶ *See Margaret S. Krzycki*, *supra* note 5.

⁷ *See Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁸ *Id.*

⁹ *Id.*

occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁰ 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.¹¹ 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.¹² Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that the employing establishment did not honor his work restrictions, the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.¹³ However, appellant has submitted insufficient evidence to support this allegation and, therefore, it cannot be deemed a compensable factor of employment.

Regarding appellant's allegation that the employing establishment coerced him into accepting a job offer, there is insufficient evidence to establish this allegation as factual and, therefore, it cannot be deemed a compensable factor of employment.

Regarding appellant's filing of grievances and EEO complaints, he has not submitted any evidence establishing that any findings were made of error or abuse by the employing establishment in connection with these complaints and, therefore, this allegation is not deemed a compensable factor of employment.

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.¹⁴

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *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).

¹³ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

¹⁴ 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 5.

The decisions of the Office of Workers' Compensation Programs dated August 4, May 5 and March 10, 1998 are affirmed.

Dated, Washington, D.C.
September 8, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member