

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD POTTER and U.S. POSTAL SERVICE,
GAY STREET POST OFFICE, Portsmouth, OH

*Docket No. 99-1874; Submitted on the Record;
Issued September 25, 2000*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

On August 29, 1997¹ appellant, then a 42-year-old modified letter carrier, filed a claim for major depression beginning January 1, 1995.² On the claim form and in an October 17, 1997 letter, appellant attributed his condition to "forced overtime," harassment, verbal abuse including comments that he worked too slowly and excessive supervision.³ In a November 22, 1997 letter, appellant alleged that on November 15 and 17, 1994, his supervisor, David Rockwell, refused to provide requested duty status form reports and sent appellant home. On November 17, 1994 Mr. Rockwell went to appellant's "doctor's office and told the secretary that he was with Workers' Compensation" and obtained appellant's medical record without his release.

Appellant alleged that, during the previous 18 months, despite oral and written requests not to be assigned overtime,⁴ management forced him to work overtime on Fridays, his

¹ Appellant stopped work on August 7, 1997 and returned to work in June 1998, again stopped work in August 1998 due to a right shoulder impingement syndrome requiring surgery on October 1, 1993 and May 7, 1995, and returned to limited-duty work effective February 16, 1999.

² Appellant's claim for major depression was assigned Claim No. 090432795. On September 25, October 1 and November 5, 1997, the Office provided appellant with a detailed explanation of the type of medical and factual evidence needed to establish his claim. The record contains an October 29, 1996 decision regarding appellant's Claim No. A9-383416 for a June 1, 1993 accepted right shoulder impingement syndrome caused by carrying a mailbag. The Office found that appellant had no loss of wage-earning capacity as of August 7, 1995, the date he returned to work as a modified carrier in a restricted duty status, with medical evidence that he had reached maximum medical improvement. This decision is not before the Board on the present appeal.

³ In the October 17, 1997 letter, appellant mentioned an EEO (Equal Employment Opportunity) grievance related to his allegations. However, there are no documents of record related to this grievance.

⁴ Appellant submitted a copy of a May 21, 1996 letter to his supervisors, requesting that he be scheduled for two

scheduled day off, and to do out-of-craft work on Saturdays, including purchasing and serving doughnuts and beverages to supervisors.⁵ He also alleged supervisors would follow him on his route and to the bathroom.⁶ He described a July 31, 1997 incident, in which he agreed to supervisor Rick Johnson's request to fill in for an absent carrier and thus received permission to take a late lunch at 2:00 p.m. in the dock break area, but was questioned by Mr. Johnson, at supervisor Marilyn Partee's instruction, as to why he was on the dock. Appellant then "became very upset" and tearful and experienced chest pain.

In a March 10, 1998 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he failed to establish that the claimed emotional condition occurred in the performance of duty.⁷ Appellant disagreed with this decision and, in a March 24, 1998 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review, that was held February 22, 1999.

At the February 22, 1999 hearing, appellant newly alleged that he felt distress and demeaned from being assigned by Mr. Rockwell to collect money for lottery tickets, with instructions to be "low key" lest postal inspectors find out. Also, appellant alleged that he sustained emotional stress from being forced to work eight hours a day when his physician had only approved a four-hour workday.

In support of his allegations of forced overtime in violation of the employing establishment labor agreements, appellant submitted a September 26, 1997 step three union grievance final settlement agreement, whereby the employing establishment agreed to "comply with the National Agreement when scheduling overtime" or face "monetary settlement."⁸ Appellant also submitted corroborating evidence from union officials. In undated letters received by the Office on October 20, 1997, Stanley Yazell, union branch president, Robert

consecutive days off, Saturday and Sunday, in accordance with a national labor agreement. Appellant commented "that the overtime that is being generated on stations and relays is unnecessary ... there [are] is not any stations and relays on Saturday."

⁵ Appellant submitted written and oral requests in March 1997, but Mr. Rockwell assigned him overtime on April 4, 11, May 9 and June 6, 1997. Appellant noted that, on 25 Saturdays during the previous 18 months, he requested leave without pay or annual leave. Appellant attached copies of Form 3971, "Request for or Notification of Absence," for various hours on February 17, 24, March 9, August 3, 10, 17, 31, September 7, 14, October 12, 18, November 23 and December 28, 1996, January 4, 11, 18, March 1, 15, 29, April 5, 12, May 3, 10, June 7 and July 19, 1997. All of these dates were Saturdays. Appellant also submitted an April 21, 1997 employing establishment Form 3189, "Request for Temporary Schedule Change for Personal Convenience," indicating that he wished to change his scheduled day off from Friday to Saturday for the week of April 26 to May 2, 1997.

⁶ Appellant submitted copies of an October 6, 1997 letter, signed by five residents of an apartment house on his mail route, stating that the employing establishment personnel questioned residents regarding appellant's arrival time, waited for him, followed him on the job and accompanied him door to door.

⁷ The Office found that appellant had not established harassment, verbal abuse, excessive supervision, or excessive overtime and that his reaction to being made to work on Saturdays and get donuts was a self-generated dislike of assigned duties.

⁸ The settlement agreement does not specifically mention appellant.

Tipman, Jr. and E. Boyd, union stewards, stated that management refused appellant's numerous requests for Saturdays off, instead paying appellant overtime on Fridays. Mr. Yazell and Mr. Tipman noted that the union "recently won a class action grievance" regarding management forcing appellant to work on Friday, while not on the overtime list.

Appellant also submitted factual evidence in support of his allegations of harassment by supervisors and coworkers. In an October 7, 1997 letter, Brad Ramey, one of appellant's coworkers, noted that workers commented that appellant did not have to "work for a living, they wish, that all they would have to do is serve coffee and doughnuts" on Saturdays. In a letter received by the Office on October 20, 1997, Mr. Boyd noted that he had seen appellant's "supervisor go into the bathroom looking for him, when he was at lunch." In a letter received by the Office on October 20, 1997, Mr. Yazell and Mr. Tipman corroborated appellant's account of a pattern of "verbal abuse and harassment by a few of his coworkers because of his job assignments and his limitations.... He has been followed by management while he has been doing his job assignments" and while delivering packages.⁹

Appellant also submitted medical evidence in support of his claim. In a March 15, 1996 report, Dr. Nancy B. Graham, an attending Board-certified psychiatrist, stated that appellant required a two-month work absence due to "severe major depression" with an inability to concentrate. He opined that appellant's "condition does appear to be work related and the stressors at work are currently exacerbating his problems." In periodic form reports dated August 7 to September 18, 1997, Dr. Graham diagnosed recurrent major depression with insomnia, "anxiety, fatigue, hopelessness [and] suicidal thoughts." She prescribed medication. Dr. Graham commented that "[w]ork-related stresses," beginning in 1995, including "the work schedule and supervision he's had" caused appellant's incapacitation.

In an October 9, 1997 report, Dr. Graham noted treating appellant beginning in January 1996. She reported appellant's account of "problems on the job" related to the accepted shoulder injury, "being sent home from work and told not to return without a doctor's release but being refused the paperwork to get the leave approved ... and supervisors illegally obtaining some of his medical records." Dr. Graham initially discharged him from treatment in April 1996, resuming in July 1997. She related appellant's account of being "made to ... put in overtime though he was not on the overtime list. Appellant was made to fetch coffee and doughnuts for his bosses. He was sometimes followed into the bathroom.... As a result of these behaviors, [appellant] has developed major depression again and his symptoms have been unremitting this time around." Dr. Graham prescribed lithium and Klonopin and opined that there was no "doubt in [her] mind that the current symptoms [were] directly attributable to the stress he has faced at work."

Dr. Graham submitted periodic reports through April 2, 1998 finding appellant totally disabled for work due to recurrent major depression "directly caused" by his federal

⁹ In an undated letter received by the Office on October 20, 1997, Robert G. Ridenour, a coworker of appellant, noted that the employing establishment abolished a policy allowing workers to come in early and revise schedule slips after the fact, blaming appellant for submitting revised slips. Mr. Ridenour stated that appellant was treated unfairly due to his shoulder injury.

employment. In May 20 and July 23, 1998 duty status reports, Dr. Graham opined that appellant's depression had lessened, that he was able to work full-time unrestricted duty from a psychiatric standpoint, although he still felt "overwhelmed at times...."

By decision dated and finalized May 3, 1999, the Office hearing representative affirmed the Office's March 10, 1998 decision. The hearing representative found that "being told not to report to work until he had a note from his physician, being requested to work on Saturdays and being criticized by management for not performing his work quickly enough," were normal administrative functions of the employer and that appellant did not establish error or abuse by the employing establishment. The hearing representative further found that appellant had established that he was "requested to get donuts [and] collect money for lottery tickets," but that these assignments were not "an abuse of authority...." The hearing representative found that appellant had not established harassment, excessive supervision, or that he was forced to work outside medical restrictions.¹⁰ The hearing representative concluded that as appellant had failed to allege a compensable factor of employment, "a discussion of the medical evidence [was] not warranted."

The Board finds that this case is not in posture for a decision, as appellant has alleged compensable factors of employment, warranting further development of the evidence by the Office.

Where a claimed disability results from an employee's emotional reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Federal Employees' Compensation Act.¹¹ When working conditions are alleged as factors in causing an emotional 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.¹² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Where 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.¹³

Initially, the Board finds that appellant has not established his allegations of harassment or excessive supervision. The Board notes that unfounded perceptions of harassment do not

¹⁰ The hearing representative noted that there were no CA-17 forms of record indicating that appellant "was only capable of working four hours per day during a period that he was actually working full time," but that he had access only to the emotional condition claim file (Claim No. A9-0432795), not appellant's "file for his shoulder injury, which may contain the forms in question."

¹¹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

¹² *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

¹³ *Id.*

constitute an employment factor and that mere perceptions are not compensable under the Act.¹⁴ In the present case, appellant has not submitted sufficient evidence to support the alleged incidents of harassment. Appellant's accounts and the witness statements of his coworkers regarding appellant being followed on his route or to the bathroom do not indicate that the supervisors involved were performing functions other than customary supervisory functions. Accordingly, the Board finds that appellant has failed to substantiate his claims of harassment.¹⁵

However, the Board finds that the Office hearing representative made two erroneous findings in the decision dated and finalized May 3, 1999, thereby reaching the incorrect conclusion that appellant had failed to allege a compensable factor of employment.

First, the hearing representative found that appellant had established that he was assigned by his supervisor, Mr. Rockwell, to purchase and serve doughnuts and collect money for lottery tickets. Thus, these were specially assigned duties of his federal employment and come within the scope of the Act.¹⁶ Appellant asserts that these specially assigned duties caused him emotional distress and contributed to the claimed major depression. Also, Dr. Nancy B. Graham, appellant's attending Board-certified psychiatrist, noted in her October 9, 1997 report, that appellant was "made to fetch coffee and doughnuts for his bosses" and that this stress contributed to his depression. Thus, appellant submitted factual evidence implicating a compensable factor of employment, as well as medical evidence generally supporting a causal relationship between that factor and the claimed major depression.

Second, the hearing representative properly found that the assignment of required overtime work was an administrative matter not generally under coverage of the Act.¹⁷ However, the September 26, 1997 union grievance settlement and the October 20, 1997 letters from union officials corroborating appellant's account of improper overtime, indicate that the employing establishment committed error. This is significant because the Board has found that administrative matters will be considered employment factors where the evidence discloses error or abuse on the part of the employing establishment.¹⁸ Therefore, the Board finds that the assignment of overtime work in this case may be a compensable factor of employment under the administrative error principle. Further, Dr. Graham's October 9, 1997 report states that the forced overtime contributed to appellant's emotional condition. Thus, appellant has implicated a

¹⁴ *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹⁵ Similarly, the Board finds that appellant submitted insufficient evidence to establish his allegation of being made to work a full eight-hour day contrary to a prescribed limitation of four hours per day, as there are no medical reports of record restricting appellant to a four-hour workday. Also, the Board finds that there is insufficient evidence of record indicating that appellant's supervisor, Mr. Rockwell, improperly obtained medical records from an attending physician on November 17, 1994. Thus, appellant has not established this as a factor of employment.

¹⁶ *Lillian Cutler*, *supra* note 11.

¹⁷ *Sandra F. Powell*, 45 ECAB 877 (1994); *Frank A. McDowell* 44 ECAB 522 (1993), *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹⁸ *See Richard Dube*, 42 ECAB 916 (1991).

second compensable factor of employment and submitted medical evidence generally supporting causal relationship.

Appellant has implicated the compensable employment factors of administrative error and an emotional reaction to an established specially assigned duty, as well as submitted medical evidence generally supporting causal relationship. Thus, the case must be remanded to the Office for further development. On return of the case, the Office shall conduct appropriate development to determine appellant's work schedule during the alleged periods of overwork. The Office shall also conduct development to determine the circumstances of the specially assigned duties of purchasing doughnuts and collecting money for lottery tickets. The Office shall review the medical record to determine if there is sufficient evidence to establish that the alleged administrative error and the reaction to specially assigned duties caused or contributed to the alleged emotional condition and if such condition caused any periods of disability from work. Following this and all other development the Office may deem necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers' Compensation Programs dated and finalized May 3, 1999 is set aside, and the case is remanded to the Office for further development consistent with this decision and order.

Dated, Washington, DC
September 25, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member