U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. PIETRO and U.S. POSTAL SERVICE,
POST OFFICE, Ft. Lauderdale, FL

Docket No. 99-2166; Submitted on the Record;
Issued September 21, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

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

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision.

On February 20, 1998 appellant, then a 51-year-old limited-duty clerk, filed a claim for an occupational disease (Form CA-2) assigned number 06-0723182 alleging that on February 20, 1998 he first realized that his "acute anxiety disorder/exacerbating tinnitus" was caused by factors of his employment.[1] Specifically, appellant stated that a "too loud" public announcement system at the employing establishment caused his emotional condition.[2] He also stated that the noise levels were above his medical restrictions. Appellant's claim was accompanied by factual and medical evidence.

In an April 6, 1999 letter, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised appellant to submit additional factual and medical evidence supportive of his claim. In response, appellant submitted additional factual and medical evidence.

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[1] Prior to filing the instant claim, appellant filed a claim assigned number 06-0574286 for an emotional condition sustained on March 23, 1993. The Office of Workers' Compensation Programs accepted appellant's claim for mild anxiety disorder by letter dated September 12, 1995. On August 27, 1997 appellant filed a traumatic injury claim (Form CA-1) assigned number 06-0686730 alleging that on August 25, 1997 he sustained an exacerbation of his anxiety which gave rise to more intense tinnitus and severe headaches. The Office denied appellant's claim by decision dated November 3, 1997.

[2] The record reveals that appellant retired from the employing establishment on disability effective July 17, 1998.

By decision dated May 21, 1999, the Office found the evidence of record insufficient to establish that appellant 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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.[3]

Perceptions and feelings alone are not compensable. 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 factors of his federal employment.[4] To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) 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.[5]

In the present case, appellant has primarily attributed his emotional condition to cumulative effects of a "too loud" public announcement system at the employing establishment, which was outside his medical restrictions. If substantiated by the record, appellant's allegation would constitute a compensable factor of employment.[6] The record reveals a September 9, 1993 medical report of Dr. Sumner G. Fredd, a Board-certified family practitioner, which indicated that appellant could not work on "OCR/BCS" machines, stand over one hour and push objects heavier than 35 pounds. In addition, his report indicated that appellant should not be exposed to loud noises or sounds over 60 decibels and that he may wear protective headphones. A June 12, 1997 medical report from the Department of Veterans Affairs (VA) reiterated Dr. Fredd's physical and noise restrictions. A June 7, 1994 settlement of appellant's complaint filed with the Equal Employment Opportunity Commission (EEOC) indicated that the employing establishment would provide appellant with a limited/light-duty assignment and hours that were described to accommodate his ankle and tinnitus. Appellant submitted a June 19, 1998 letter from the Occupational Safety and Health Administration (OSHA) advising him that an inspection of the employing establishment was conducted on March 25, 1998 and that noise

[3] *Lillian Cutler*, 28 ECAB 125 (1976).

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

[5] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[6] *Diane C. Bernard*, 45 ECAB 223, 228 (1993); *Minnie L. Bryson*, 44 ECAB 713 (1993).

exposure from the facility public announcement system did not violate OSHA standards. However, this letter indicated that "[t]he measured noise levels while the public announcement system was in operation were 75 to 80 decibels." Although the employing establishment denied that appellant was exposed to excessive noises and contended that the sound system remained within the range of acceptable decibels governed by OSHA in letters dated August 5, 1997 and March 4 and 12, 1999, the Board finds that the decibel range of the public announcement system at the employing establishment violated appellant's medical restrictions and constitutes a compensable factor of employment under the Act.

In a February 20, 1998 narrative statement, appellant alleged in addition to the loud noise from the public announcement system causing his emotional condition, that his emotional condition was caused by harassment from the employing establishment in the form of a prearbitration decision involving his EEOC complaint and other malicious methods. In an emotional condition claim for harassment or discrimination to give rise to a compensable disability under the Act there must be evidence that the alleged acts of harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[7]

Appellant's reaction to the prearbitration decision involves an administrative or personnel action of the employment establishment. An employee's emotional reaction to an administrative or personnel matter is not generally covered under the Act. Thus, an emotional reaction to matters pertaining to leave are not generally covered under the Act without error or abuse on the part of the employing establishment.[8] In this case, appellant has failed to establish that the employing establishment committed error or abuse in handling the prearbitration decision.

Further, appellant has failed to specifically identify "other malicious methods" by the employing establishment that caused his emotional condition. Therefore, the Board finds that appellant has failed to submit any evidence to corroborate his allegation that he was harassed by the employing establishment.[9]

However, since appellant has established a compensable factor of employment involving exposure to loud noise, the Board will address the medical evidence of record. In support of his claim, appellant submitted a September 15, 1998 medical report of Dr. Laurence Miller, a licensed psychologist, indicating that he had tinnitus secondary to his military service-related injury which was exacerbated by stress and produced an amplifying vicious cycle of tinnitus-anxiety. He stated that on several occasions, this amplifying exacerbation cycle was activated and sustained to a degree sufficient to produce psychological decompensation and the development of an acute anxiety disorder. Dr. Miller noted a March 23, 1993 employment injury and appellant's medical treatment received in response to the presentation of the written prearbitration decision placed on appellant's desk on August 25, 1997. He opined that the

[7] *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

[8] *Daryl R. Davis*, 45 ECAB 907 (1994).

[9] *Joan Juanita Greene*, 41 ECAB 760 (1990); *Ruthie M. Evans*, 41 ECAB 416 (1990).

extreme psychological decompensation that resulted appeared to represent the cumulative effect of the March 23, 1993 and August 25, 1997 incidents. Dr. Miller further opined that, "[d]ue to the aggravating effect of loud workplace noises on [appellant's] tinnitus and his vulnerability to stress-related psychological decompensation when his tinnitus was exacerbated, this [appellant] is disabled from his former work role on a psychological basis." He failed to provide any medical rationale explaining how or why appellant's emotional condition was caused by the compensable employment factor of loud noise. Dr. Miller's opinion that appellant's emotional condition was caused by the prearbitration decision is insufficient to establish appellant's burden because as previously discussed, it does not constitute a compensable factor of employment.

In further support of his claim, appellant submitted the October 27, 1998 progress notes of Dr. Waden E. Emery, III, a Board-certified psychologist and neurologist, revealing that:

> "His adversity to noise, by history, was clearly exacerbated by his [employing establishment] jobs and loud public announcement system in 1997; levels of 75 [to] 80 decibels were reported by OSHA at [the employing establishment.] This exceeds the VA medical restrictions of no exposure to loud noises or sounds over 60 decibels."
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> Dr. Emery stated:
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> "The combined effect of exposure to loud noises and stress in the work environment and the [appellant] states he was presented with a prearbitration order sending him back to a noisy tour of duty around August 24 and August 26, 1997, led to his immediate hospitalization for acute anxiety from which he has never fully recovered; his tinnitus has only progressively worsened."

Dr. Emery opined that appellant "suffers from a hypersensitivity to noise and predisposal of stress in the environment and they were two of the consequences of his tinnitus disability is severe anxiety as a result." He, however, failed to provide any medical rationale explaining the causal relationship between appellant's severe anxiety and loud noise. As previously discussed above, appellant's reaction to the prearbitration decision does not constitute a compensable factors of his employment. Therefore, Dr. Emery's opinion that appellant's emotional condition was caused by the prearbitration decision is insufficient to establish appellant's burden.

The May 21, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 21, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member