U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM EDWARDS and U.S. POSTAL SERVICE
PRIORITY MAIL FACILITY, Boston, MA

Docket No. 00-261; Submitted on the Record;
Issued August 16, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he suffered an emotional condition causally related to compensable factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned his request for a hearing.

On July 16, 1998 appellant, then a 37-year-old distribution clerk (general expediter), filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from stress and anxiety as a result of being placed in an unsafe work environment. The employing establishment controverted this claim, contending that the claim was filed after appellant was terminated on May 26, 1998 due to a violation of a "last chance agreement."

Appellant submitted a letter in which he stated that he was involved in a work-related injury on April 5, 1998 through no fault of his own,[1] that he filed an unsafe work practice form two days later and that this was "white-washed and covered up." Appellant alleged, "The resulting stress and anxiety from the cover-up as well as the fact that from that point on I was working in an unsafe work environment with numerous strained relationships with fellow employees caused me to leave work sick on May 24, 1998." He stated that the employing establishment retaliated by terminating him on May 26, 1998.

The record reflects that on April 8, 1998 appellant filed Postal Service Form 1767, entitled, "Report of Hazard, Unsafe Condition or Practice." Appellant contested the use of power jacks. The employing establishment responded that the use of pallet jacks was mandatory and that all pallet jack operators have been certified to drive and are monitored continuously to ensure that safe driving practices are followed. The employing establishment further noted in a

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[1] Appellant filed a notice of traumatic injury and claim for continuation of pay/compensation on April 5, 1998, alleging that he was injured on that date when he "was placing postal packs for dispatch with hand jack when a mailhandler barreled into postal pack."

letter dated July 1, 1998 that power jacks were being utilized due the large number of postal packs in the building, and that appellant's claim that he was intentionally hit by a pallet jack driver had no supporting evidence.

Appellant submitted a medical report dated June 1, 1998 wherein Dr. Boris E. Coronado, an internist, stated that he first saw appellant on April 21, 1998 for left knee pain due to a trauma he suffered at work. He also noted that he followed appellant for cervical radiculopathy and brachial plexopathy which he has had for approximately 10 years." Dr. Coronado stated that appellant had recent stress and anxiety due to his unpredictable situation at work. He further noted that he saw appellant for follow-up on May 26, 1998, at which time appellant stated that he had to leave work early on May 24, 1998 due to nausea, abdominal pain and overall stress and anxiety."

By letter dated August 6, 1998, the Office requested further information from appellant.

After this letter, additional information was received by the Office, including numerous statements by appellant, dated April 11 to October 3, 1998. In these statements, appellant expounded on his earlier statement by stating that he filed an unsafe work practice form contesting the use of power jacks as jitneys. He further stated that on May 24, 1998 he left work due to stomach pain and violent nausea, that he could not find a supervisor to tell that he was leaving, that when he returned the following Monday, he was directed to have an urinalysis which he passed and that on Tuesday he was terminated. Appellant alleged that his termination was the direct result of trying to enforce workplace safety. He also stated that he still believed that he was forced to work in an unsafe environment and that he was deliberately intimidated by fellow employees over his filing of the safety report.

In further support of his statements, appellant filed several medical reports. In a medical report dated August 7, 1998, Dr. Coronado stated that he has been appellant's primary care physician, that he first saw appellant on April 5, 1998 and that appellant's stress and anxiety resulted from his knee injury. He further noted that appellant was very concerned about safety conditions at work. Appellant further submitted medical reports by Dr. James D. McEleney, a Board-certified preventive medicine specialist. In a medical report dated June 8, 1998, Dr. McEleney diagnosed appellant as suffering from left leg contusion and noted that he was also experiencing stress related to controversy at work. In a medical report dated June 29, 1998, Dr. McEleney noted that he recollected that when he first saw appellant on April 10, 1998, he was experiencing a great deal of stress because of the work-related incident. Finally, appellant submitted medical records from St. Elizabeth's Medical Center, which indicated that appellant was treated on April 6 and April 10, 1998 for a left leg contusion and that he was able to return to work on April 10, 1998.

Other documents received by the Office included an April 6, 1998 accident report and a form entitled, "Charge Against Employer" which was filed by appellant on June 19, 1998.

Finally, appellant submitted a statement by Allan Chin dated June 5, 1998, wherein Mr. Chin stated that he witnessed the event in question, that appellant had just brought out another full postal pack utilizing a manual, nonmotorized pallet jack, that he had not yet pulled the pallet jack from under the postal pack when John Parker came through the path, that he did

not slow down and never came to a stop, that Mr. Parker hit a postal back with the BMC he was carrying, that the postal packet was dragged into another postal pack that pushed the pack that appellant was carrying and that this caused the manual pallet to run over appellant's foot.

By letter dated November 16, 1998, the employing establishment responded to appellant's allegations by noting that appellant was treated and released from St. Elizabeth's Medical Center on April 5, 1998 for a minor left foot contusion, that the situation was investigated, parties were interviewed and it was determined that no unsafe condition existed other than the normal congestion involved in a dispatch, that the use of pallet jacks is mandatory due to the large number of postal packs worked in the building, that they were not aware of any safety issues regarding appellant until his removal in May 1998, that proper procedure was followed with regard to the Form 1767.

In a decision dated January 27, 1999, the Office denied appellant's claim for compensation and medical benefits, finding that he failed to establish that he sustained an injury in the performance of duty.

By letter dated February 11, 1999, appellant requested an oral hearing before an Office hearing representative.

By notice dated June 4, 1999, appellant was informed that his hearing would take place on Tuesday, July 20, 1999 at 2:00 p.m. This notice was mailed to appellant at P.O. Box 1850 in Boston, Massachusetts 02205, the address listed on appellant's Form CA-2, the address to which the January 27, 1999 decision was sent and was the address listed by appellant on his request for oral hearing. Appellant failed to appear at the hearing.

By decision dated July 29, 1999, the Office informed appellant that, since he did not appear for the hearing and had not shown good cause for such failure to appear, it found that appellant abandoned his request for a hearing.

The Board finds that appellant has failed to establish that he sustained an emotional condition while in the performance of duty.

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.[2] 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 hat 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.[3]

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[2] *Edward C. Heinz*, 51 ECAB ___ (Docket No. 99-992, issued September 12, 2000); *Martha L. Street,* 48 ECAB 641, 644 (1997).

[3] *Ray E. Shotwell, Jr.,* 51 ECAB ___ (Docket No. 99-2032, issued September 12, 2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes under the coverage of the Federal Employees' Compensation Act.[4]

In the case at hand, appellant argued that his alleged emotional condition was caused by the employing establishment's improper handling of his complaint regarding a workplace hazard. He also alleged that his stress was caused by his improper termination by the employing establishment. To the extent that appellant is alleging an emotional reaction to the employing establishment's handling of his complaint about the safety of the workplace or his termination, appellant must submit probative evidence of error or abuse. It is well established that administrative or personnel matters, although generally related to the employment, are primarily administrative functions of the employer rather than duties of the employee.[5] The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.[6] Appellant has not presented evidence that the employing establishment acted abusively in handling his complaint of a safety violation. The evidence of record indicates that the employing establishment conducted an investigation, and determined that the use of pallet jacks was not a hazard. With regard to appellant's termination, appellant has failed to provide any proof that he was terminated due to his safety complaint. The Board additionally notes that an employee's dissatisfaction with perceived poor management is not compensable under the Act.[7]

With regard to appellant's contention that his work safety complaint caused him to be harassed by others in the workplace, appellant has not submitted any documentation that would indicate that this event occurred. Consequently, appellant has failed to implicate a compensable employment factor as a cause for his claimed emotional condition.

Unless a claimant establishes a compensable employment factor, it is unnecessary to address the medical evidence of record.[8] Inasmuch as appellant failed to implicate any compensable factors of employment, the Office properly denied his claim without addressing the medical evidence of record.

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

[5] *Edward C. Heinz*, *supra* note 2; *Anne L. Livermore,* 46 ECAB 425 (1995).

[6] *Ray E. Shotwell, Jr.*, *supra* note 3; *Dinna M. Ramirez,* 48 ECAB 308 (1997).

[7] *Id.; Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[8] *Ray E. Shotwell, Jr., supra* note 3; *Michael Thomas Plante, supra* note 7.

The Board also finds that appellant abandoned his request for an oral hearing before an Office hearing representative. The Office noted that the hearing was scheduled for July 29, 1999, that appellant received written notification of the hearing 30 days in advance, that appellant failed to appear and that the record contained no evidence that appellant contacted the Office to explain his failure to appear.

Section 10.137 of Title 20 of the Code of Federal Regulations, revised as of April 1, 1997, previously set forth the criteria for abandonment:

> "A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in assessment of costs against such claimant."
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> "A claimant who fails to appear at a schedule hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing."[9]

These regulations, however, were again revised as of April 1, 1999. Effective January 4, 1999, the regulations now make no provision for abandonment. Section 10.622(b) addresses requests for postponement and provides for a review of the written record when the request to postpone does not meet certain conditions.[10] Alternatively, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative. The section is silent on the issue of abandonment.

The legal authority governing abandonment of hearings now rests with the Office's procedure manual. Chapter 2.1601.6 of the procedure manual, dated January 1999, provides as follows:

> "e. Abandonment of Hearing Requests.
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> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of hearing.

[9] 20 C.F.R. §§ 10.137(a), 10.137(c) (revised as of April 1, 1997).

[10] 20 C.F.R. § 10.622(b) (1999).

> "Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [District Office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.
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> "(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.
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> "This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."[11]

In the present case, by letter dated June 4, 1999, the Office informed appellant that an oral hearing was scheduled for his case on July 29, 1999. This notice was sent to appellant at P. O. Box 1850 in Boston, Massachusetts 02205, the same address listed on his request for an oral hearing. Therefore, the record indicates that the Office mailed appropriate notice to appellant at his last known address. The record also supports that appellant did not request postponement, that he failed to appear at the schedule hearing and that he failed to provide any notification for such failure within 10 days of the schedule date of the hearing. In a decision dated July 29, 1999, the Office found that appellant abandoned his request for an oral hearing before an Office hearing representative. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6 (January 1999).

The July 29 and January 27, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 16, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member