

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTOPHER PENNELL and U.S. POSTAL SERVICE,
POST OFFICE, El Paso, TX

*Docket No. 00-1250; Submitted on the Record;
Issued August 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable work factors.

On October 27, 1998 appellant, then a 43-year-old equipment mechanic, filed a claim alleging that he sustained an emotional condition causally related to his federal employment. Appellant asserted on the claim form that he had been harassed by his supervisors. By decision dated December 8, 1998, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not substantiated any compensable work factors as contributing to an emotional condition.

Following an August 25, 1999 hearing, an Office hearing representative issued a decision dated November 18, 1999 affirming the prior Office decision.

The Board finds that appellant did not meet his burden of proof in establishing an emotional condition causally related to compensable work factors.

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.¹ 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.²

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See 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 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 within the coverage of the Federal Employees' Compensation Act.³

Appellant has alleged harassment and disparate treatment by his supervisors in this case. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁴ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁵

In this case, appellant has not submitted evidence sufficient to establish a compensable work factor based on harassment. The record contains two statements from coworkers that appellant was singled out for harassment, without providing detailed first-hand accounts of specific incidents. Appellant's supervisors have provided several statements refuting any allegations of harassment or disparate treatment. There are no findings of harassment by the Equal Employment Opportunity Commission, or other probative evidence sufficient to establish a compensable work factor based on harassment in this case.

In addition to a claim of harassment, appellant has also submitted evidence with respect to specific disciplinary actions taken by the employing establishment against appellant during his federal employment. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁶ 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.⁷

The hearing representative makes a finding that the record shows that grievances filed by appellant were settled without admission of error by the employing establishment, and therefore

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

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁵ *Helen P. Allen*, 47 ECAB 141 (1995).

⁶ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

no compensable work factors were found. The Board disagrees with this assessment of the evidence. It is true that some grievances on disciplinary actions were settled by mutual agreement; for example, a 14-day suspension dated December 26, 1996 was reduced to a 7-day suspension. There is no admission or acknowledgment of error by the employing establishment, and the mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.⁸

However, the record does contain a May 10, 1999 decision from an arbitrator that finds a seven-day suspension issued in May 1998 was not warranted. In a decision dated October 16, 1997, an arbitrator found that a letter of warning issued in October 1996 was excessive and not supported by the evidence. In addition, as noted by the hearing representative, the record contains an arbitrator's decision dated May 5, 1987, finding that the employing establishment violated the employment contract by charging appellant with being absent without leave in July 1985. The hearing representative found this to be clearly unrelated to the claim, without further explanation. Since appellant has submitted evidence regarding the incident and has not excluded it from his claim, the Board finds that it is relevant.

The Board finds that the three arbitrators' decisions noted above do constitute probative evidence of error by the employing establishment in the specific administrative actions taken. The three disciplinary actions taken do, therefore, constitute compensable work factors.

In order to meet his burden of proof, however, appellant must submit probative medical evidence on causal relationship between the identified employment factors and a diagnosed emotional condition. Appellant has not met his burden of proof in this regard. In a report dated August 18, 1999, Dr. Jean Joseph-Vanderpool, a psychiatrist, diagnosed major depression and post-traumatic stress disorder. Dr. Joseph-Vanderpool noted that appellant reported being subject to harassment and unfair treatment, without discussing the identified compensable factors of administrative error discussed above. The record does not contain a reasoned medical opinion, based on an accurate background containing a discussion of compensable work factors and an explanation on causal relationship with a diagnosed emotional condition. The Board accordingly finds that appellant did not meet his burden of proof in this case.

⁸ See *Michael Thomas Plante*, *supra* note 7; *Richard J. Dube*, *supra* note 6 (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

The decision of the Office of Workers' Compensation Programs dated November 18, 1999 is modified to reflect that appellant has substantiated compensable work factors and is affirmed as modified.

Dated, Washington, DC
August 3, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member