U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD G. MICHAEL and U.S. POSTAL SERVICE,
POST OFFICE, Toledo, OH

Docket No. 00-470; Submitted on the Record;
Issued February 16, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty.

On January 8, 1997 appellant, a 58-year-old letter carrier, filed a claim for employment-related emotional stress, which he stated he first became aware of on March 25, 1996. Appellant was treated by Dr. Panos T. Doukides, a specialist in psychiatry, who noted in a report dated April 8, 1996 that appellant had been hospitalized from March 26 to April 8, 1996 and recommended that he remain off work from March 26 to April 30, 1996.

In a report dated March 30, 1996, Dr. John R. Van der Veer, Board-certified in psychiatry and neurology, stated that he was currently treating appellant at The Toledo Hospital due to a recurrence of a previously treated psychiatric condition.

In a report dated May 2, 1996, Dr. Van der Veer stated that he had originally treated appellant for nightmares which he attributed to his job, in addition to his concern with homicidal feelings toward his bosses. He advised that appellant had chronic depression precipitated in part by the failure of his first marriage. Dr. Van der Veer diagnosed major depression, recurrent with paranoid ideology, and stated:

> "[Appellant's] work history is very definitely involved in this. There has grown up an unfortunate negative interaction between [appellant] and his postmaster in which [appellant] frequently utilizes passive-aggressive expressions ... but this appears to be just as rapidly and readily responded to by the same kind of passive-aggressive responses on the part of the postmaster."

In a statement dated January 8, 1997, appellant alleged that his postmaster and other supervisors had followed him, while on his route, causing him to feel stressed while performing his duties. He claimed that he was timed during his lunch breaks, and on one occasion was written up for taking nine minutes more than his allotted half hour for lunch. Appellant claimed

that in this particular instance he was experiencing diarrhea and was unable to return to his route on time. He also expressed the belief that he was watched by his supervisors more than other carriers to the extent that patrons asked him why he was being followed. Appellant stated that he was "written up" for traffic and driving infractions, and that his supervisor, Mr. Ed Lee, told him that the postmaster wanted him to retire. Appellant alleged that his supervisor, Mr. Lee, scheduled a meeting with him and his union steward, to discuss complaints that he was throwing away bulk mail received from people on his route. Appellant asserted that when he asked Mr. Lee who had made these accusations, he refused to identify these people. Appellant stated that when he returned to his work area he was informed that another co-worker had taken over his route. Finally, appellant stated that when he asked Mr. Lee whether he could undergo physical therapy for a work-related injury, he was advised that if he wanted to undergo therapy during work hours he required authorization from another supervisor.

Appellant alleged that when he returned from vacation on March 18, 1996, he received a warning letter regarding the fact that he had taken off nine minutes past his lunch break. Appellant alleged that all of these incidents resulted in his experiencing extreme stress, to the extent that his wife and treating physician felt he required hospitalization.

By letter dated February 14, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence he submitted was not sufficient to establish his claim. Appellant was advised to submit a detailed description of the specific employment-related conditions or incidents he believed contributed to his illness, a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether employment factors contributed to his condition.

In a statement received by the Office on February 25, 1997, Mr. Lee responded to appellant's allegations, stating:

> "[Appellant] has been observed extending his break on several occasions. This was first discussed with him on January 24, 1996. This was done through the drivers' observation forms that every supervisor was required to do. All supervisors including the postmaster were to spend a total of three hours on street supervision each day. [Appellant] was observed taking [extended] lunch on his [p.m.] breaks at these times. On one occasion he was eating his lunch, extending his allowed time, at Burger King.... On another occasion, he was reading a paper while sitting in his truck at his apartment complex. He would change his story after each day he was caught. He said on one occasion that he remembered that he had diarrhea."

Mr. Lee delineated: (1) Appellant was observed while on his route, but was never written up for traffic and driving infractions; (2) He never told appellant that the postmaster wanted him to retire; (3) He did tell appellant that if he wanted to go to therapy during work hours it would have to be approved by another supervisor; (4) Appellant was asked to come into the office with a union steward because he was under investigation for throwing away bulk mail. The inspection service had completed an investigation, but Mr. Lee was not present during this interview. The postmaster, Mr. Chris Tinkham, told Mr. Lee that the previous postmaster had approved an order that any short-term forward bulk mail could be discarded, but Mr. Lee

claimed he had never heard of such an order; and (5) Appellant had reportedly been harassing a female employee at his previous work site, and Mr. Lee and a female counselor had to speak to appellant regarding remarks he made to another female employee, which were interpreted as being of a sexual nature.

Mr. Tinkham, the postmaster, submitted a statement to the Office, dated February 11, 1997, in which he indicated that appellant was not watched more than other employees. He corroborated that it was company policy to observe the carriers on their routes and appellant was disciplined when he was observed extending his lunch break for 10 minutes while reading the newspaper at Burger King. When appellant was confronted about returning late from his lunch break, he never attributed his tardiness to experiencing diarrhea until they met with the union officials. Mr. Tinkham stated that appellant was not warned about driving infractions, but was only given a form provided to carriers to improve their safety habits while driving and delivering mail. He also denied that Mr. Lee ever told appellant that he wanted him to retire. With regard to the meeting convened to discuss the discarding of bulk mail, Mr. Tinkham stated that he informed appellant and the other carriers in the presence of the union steward that they had been misinformed, that this type of mail should be held for the customer with all the other bulk business mail.

By decision dated March 17, 1997, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty.

By letter dated March 28, 1997, appellant requested an oral hearing, which was held on January 27, 1998. In support of his request, appellant submitted an April 16, 1996 report from Dr. Van der Veer, who stated:

> "[Appellant] was recently hospitalized [beginning] on March 26, 1996 because of recurrence of his depressive reaction and problems with impulse control. From the material gathered by [appellant] during his hospitalization and in association with his treatment over the years, [i]t is quite clear that there is a strong association between the precipitation of his illness and some personality problems [appellant] has with some particular supervisors at his work. For several years, he showed adequate control of his symptomatology with medication but it appears that the illness has recurred with some continuation of the negative interpersonal relationships experienced by [appellant]."

Appellant also submitted a January 21, 1998 report from Dr. Doukides, who diagnosed bipolar affective disorder, mixed; depressive disorder by history; and paranoid personality.

By decision dated April 7, 1998, an Office hearing representative affirmed the Office's March 17, 1997 decision.

By letter dated December 15, 1998, appellant requested reconsideration. In support of his request, appellant submitted an undated letter from his union steward, Mr. John Konrad, who claimed that Mr. Tinkham told appellant that he was going to be placed on indefinite suspension for throwing away mail. Mr. Konrad noted that the previous postmaster had instructed the

carriers to discard Mr. Kroger ads and marriage mail that were addressed to vacant houses or apartments, and asserted that Mr. Tinkham was "extremely upset." He stated that Mr. Tinkham did not at any time prior to this meeting ask any questions regarding the reason why appellant was discarding these ads. Mr. Konrad stated that as he and appellant left Mr. Tinkham's office they were informed by another carrier that he had taken appellant's route, which indicated that the decision was already made to suspend appellant before he returned to his work site.

In a letter to the Office dated March 22, 1999, the vice president of appellant's union, Mr. Robert T. Newbold, noted that the union steward had been present at the meeting with appellant's postmaster, Mr. Tinkham, in which he allegedly threatened to suspend appellant for discarding bulk mail. Mr. Newbold asserted that the employing establishment's employee manual specifically stipulates that the manager must make every effort to correct a situation before resorting to disciplinary measures, and must ensure that they gather all the facts prior to taking such measures; he alleged that Mr. Tinkham violated these guidelines by threatening to suspend appellant and by assigning his route to another driver after the meeting. He claimed that appellant's preexisting psychological condition was aggravated by the threat of an indefinite suspension and threat of removal, which would have been unwarranted.

By decision dated September 17, 1999, the Office denied the claim, finding that appellant did not submit evidence sufficient to warrant modification.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.[1] There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.[2]

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.[3] On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity

[1] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[2] *See Ruth C. Borden*, 43 ECAB 146 (1991).

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

or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.[4]

With regard to appellant's allegations of harassment, it is well established that for harassment to give rise to a compensable disability under the Federal Employees' Compensation Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[5] The Board has noted that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable and which working conditions are not deemed factors of employment.[6] The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.[7]

The Board finds that appellant has failed to submit sufficient evidence to establish his allegations that he was harassed or discriminated against by his supervisors. In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination, and appellant has not submitted sufficient evidence corroborating his allegations that he was harassed or discriminated against by the employing establishment, with regard to promotions, work assignments or disciplinary actions.[8] As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support his claim for an emotional disability.[9] For this reason, the Office properly determined that the alleged incidents of harassment constituted mere perceptions of appellant and were not factually established.

The Board further finds that there is no evidence that the administrative and personnel actions taken by management were in error, and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not

[4] *See id.*

[5] *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[6] *Norma L. Blank*, 43 ECAB 384 (1992).

[7] *Id.*

[8] *See Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.)

[9] *See Curtis Hall, supra* note 5.

covered under the Act, unless there is evidence that the employing establishment acted unreasonably.[10]

In the instant case, appellant has not presented no evidence that the employing establishment acted unreasonably or committed error with regard to the allegations pertaining to medical documentation or supervisory approval for physical therapy. Mr. Lee's statement to appellant that he required management approval if he wished to undergo therapy during work hours was not compensable.

In addition, the meeting held to discuss the practice of discarding bulk mail, and appellant's alleged replacement for one shift by a co-worker following the meeting is not a compensable factor of employment. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity, and are not compensable as factors of employment.[11] The meeting was convened to discuss the propriety of discarding certain types of bulk mail, and was part of an investigation to determine whether this was consistent with management guidelines; thus, it constituted a routine administrative action. The record contains no evidence that any formal disciplinary action was ever taken against appellant for discarding bulk mail. Appellant and his union steward claim that another carrier told him he was taking over his route following the meeting; however, the union vice president indicated in his March 22, 1999 statement that the postmaster asserted the co-worker was only covering appellant's route on that occasion because appellant was at the meeting. Appellant has submitted insufficient evidence that this alleged, one-time shift replacement constituted an unreasonable administrative action, or that this was an erroneous personnel action. He was not placed on suspension and continued to work at his regular route until being hospitalized in March 1996.

The evaluation of appellant's performance and checking his route to determine whether he reported to work in a timely fashion does not give rise to a compensable disability absent error or abuse in these administrative matters.[12] Mr. Lee and Mr. Tinkham acknowledged that appellant was watched in accordance with established policy, but no more than any other employee. They stated that they checked on appellant's conduct relating to lunch breaks, but this is an administrative function of the employer.[13] The record contains two formal disciplinary letters of warning, one issued to appellant for extending his lunch break by 35 minutes on Tuesday, January 23, 1996, and one issued for extending his lunch break by at least 9 minutes on Monday, February 26, 1996, while sitting at a Burger King. These letters suggest that the

[10] *Alfred Arts*, 45 ECAB 530 (1994).

[11] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[12] *See Helen Casillas*, 46 ECAB 1044 (1995).

[13] *Id.*

employing establishment had ample justification for monitoring appellant's activities during his lunch breaks.[14]

The occurrence of other incidents cited by appellant was denied by the employing establishment and appellant has not substantiated that such incidents actually occurred.[15] These included appellant's allegations that he was written up for traffic and driving infractions, that Mr. Lee told him that Mr. Tinkham wanted him to retire and that when he attempted to explain why he was nine minutes late returning from lunch break, Mr. Lee disregarded his explanation that he was experiencing diarrhea.

The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.[16] However, error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.[17] In the present case, there is no evidence of record to substantiate appellant's allegations of error or irregularity in being disciplined for extending his lunch break.[18]

Accordingly, a reaction to such factors does not constitute an injury arising within the performance of duty. The Office properly concluded that, in the absence of agency error or abuse, such personnel matters were not compensable factors of employment.

[14] The record contains a form entitled "[g]rievance [s]ummary," dated February 9, 1996, in which the union filed a grievance against management based on the January 26, 1996 letter of warning. In the section of the form titled "[m]anagement [p]osition," it is stated that "[e]xtending break time was already discussed on November 28, 1995 with [appellant]."

[15] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his allegations with probative reliable evidence. *Ruthie M. Evans*, 41 ECAB 416 (1990).

[16] *Elizabeth Pinero*, 46 ECAB 123 (1994).

[17] *Margreate Lublin*, 44 ECAB 945 (1993).

[18] *Drew A. Weismuller*, 43 ECAB 745 (1992); *Kathi A. Scarnato*, 43 ECAB 220 (1991).

The decision of the Office of Workers' Compensation Programs dated September 17, 1999 is hereby affirmed.

Dated, Washington, DC
February 16, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member