U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT T. PITTMAN and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Atlanta, GA

Docket No. 00-333; Submitted on the Record;
Issued July 11, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition 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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

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 employment factors.[3] This burden includes the submission of a detailed

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, 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.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When 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.[6]

On November 12, 1997 appellant, then a 50-year-old distribution clerk, filed a claim alleging that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated May 14, 1998, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors.[7] By decision dated and finalized October 8, 1998, an Office hearing representative affirmed the Office's May 14, 1998 decision. By decision dated October 4, 1999, the Office affirmed its prior decisions.[8] The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant claimed that the employing establishment mishandled his leave requests and wrongly denied them. He claimed that beginning in April 1996 a supervisor, Australia Davidson, improperly advised him that he could not take emergency leave under the Family Medical Care Act to care for his ill mother. Appellant asserted that in October and November 1996 Ms. Davidson improperly informed him that he could not claim his grandmother as a dependent for the purposes of applying for emergency leave. Appellant claimed that Ms. Davidson failed to review medical evidence he submitted in connection with a leave request in November 1996.

Appellant claimed that on November 14, 1996 he was wrongly arrested and charged with assault while he was in the parking lot of the employing establishment. He asserted that a supervisor, Ralph Johnson, insisted that he be arrested even after a witness supported his account

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] The record contains a "statement of accepted facts" which suggests that events which occurred on November 14, 1996 were accepted as compensable employment factors. However, the May 14, 1998 decision reveals that such events were not accepted as compensable employment factors.

[8] The record also contains a December 18, 1998 decision in which the Office denied appellant's October 1998 request for merit review. Appellant has not appealed this decision and the matter is not before the Board.

of what had happened. Appellant asserted that he was wrongly placed off the clock and told to stay off work until the incident had been investigated. He claimed that he was wrongly issued a disciplinary letter in connection with the January 14, 1996 incident.[9]

Appellant alleged that the employing establishment mishandled his retirement which became effective in May 1997; he claimed that he was improperly "ordered" to file for disability retirement. He asserted that the employing establishment improperly failed to advise him that he could apply for workers' compensation benefits.

Appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave and improperly handled his disability retirement related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[10] Although the handling of disciplinary actions, leave requests and retirement procedures are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[11] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[12]

Appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse regarding these administrative or personnel matters. Appellant did not establish that he was arrested and charged with assault on November 14, 1996.[13] Although the precise nature of the events on that date cannot be

[9] The record contains a November 22, 1996 document which formally advised appellant that he was placed off duty on November 14, 1996 due to his aggressive actions on that date.

[10] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[11] *Id.*

[12] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[13] In several statements, employing establishment officials indicated that law enforcement officers were called on November 14, 1996 but that appellant was not arrested. In a statement addressed to appellant and dated January 1, 1997, an Atlanta police officer indicated that, due to conflicts in the accounts given, appellant was not arrested on the date in question.

identified, the record contains ample evidence to show that appellant acted in an aggressive manner and threw objects.[14] Appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse regarding its disciplinary actions on November 14, 1996, including calling law enforcement officials or placing him on off-duty status.

Moreover, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse in handling his leave requests or its administration of retirement procedures.[15] The record contains a copy of a November 1996 document entitled "stipulation for compromise settlement" which was produced in connection with an action which appellant instituted against the employing establishment in the District Court for the Northern District of Georgia.[16] The employing establishment agreed to pay appellant $700.00 in settlement of the district court claim as well as his pending Equal Employment Opportunity (EEO) claims. However, the document specifically indicated that "nothing in this stipulation for compromise settlement shall be construed as an admission of wrongdoing or liability" by appellant or the employing establishment. Appellant filed several EEO complaints and a complaint with the National Labor Relations Board (NLRB) regarding these administrative matters, but the record does not contain any results favorable to appellant.

For these reasons, appellant has not established a compensable employment factor under the Act with respect to the above-described administrative matters.

Appellant claimed that he was continuously harassed and discriminated against by Ms. Davidson in "an attempt to break him." He asserted that Ms. Davidson harassed him by wrongly accusing him of lying and by illegally altering his leave request forms. Appellant claimed that Ms. Davidson discriminated against him on the basis of race by unfairly denying his emergency leave requests. He claimed that on November 14, 1996 Mr. Johnson and Ms. Davidson committed harassment and discrimination by having him arrested on "trumped up charges." Appellant claimed that Ms. Davidson lied about details of the November 14, 1996 incident and asserted that she did so as means of discriminating against him.

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[14] The record contains statements in which employing establishment officials described the events of November 14, 1996. They note that after appellant was discussing a leave request with Ms. Davidson he threw several documents which hit her in the chest, threw a chair and abruptly left the room. In a statement addressed to appellant and dated January 1, 1997, an Atlanta police officer stated, "[a]s I recall, Ms. Davidson made no allegations of any threatening approach. She did say that you threw some papers at her and that you tried to hit her with a chair. However, Patrice Johnson was identified by both you and Ms. Davidson as the only other person in the office during the encounter. She clearly stated [that], yes, you were upset and quite vocal but that you threw the papers down in front of her, not at her and was absolutely positive that you did not try to hit her with any chair. She also made no mention of any threatening language." Although this statement, which was completed some time after November 14, 1996, suggests that there was a variance between the accounts of Ms. Davidson and Ms. Johnson, it nevertheless supports that appellant acted aggressively on November 14, 1996.

[15] The record contains statements in which employing establishment officials indicated that appellant misinterpreted the provisions covering emergency leave and that he voluntarily chose to apply for disability retirement.

[16] The settlement incorporates an October 30, 1998 statement which purports to memorialize appellant's understanding of the November 14, 1996 incident and leave usage discussions which occurred in October 1996.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[17] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[18]

In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.[19] He provided insufficient corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[20] As explained above, appellant did not establish any wrongdoing by supervisors in either the November 14, 1996 disciplinary action or the denial of his leave requests.[21] He filed EEO and NLRB complaints regarding these matters, but the record does not contain any results favorable to appellant. Thus, appellant has not established a compensable employment factor under the Act.

Appellant indicated that his union representatives did not adequately represent his interests and mishandled his grievances. However, the Board has adhered to the general principle that union-related activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.[22] Appellant generally expressed fear over losing his job, but the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[23]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[24]

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[17] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[18] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[19] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[20] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[21] While the record contains a document which suggests that there was a variance between accounts of the November 14, 1996 incident given by Ms. Davidson and a coworker, the evidence does not support a finding that Ms. Davidson was untruthful.

[22] *See Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

[23] *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

[24] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The October 4, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 11, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member