

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE PEDRO and U.S. POSTAL SERVICE,
POST OFFICE, Hilo, HI

*Docket No. 00-1234; Submitted on the Record;
Issued July 5, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to his federal employment.

On April 10, 1999 appellant, then a 50-year-old carrier, filed a notice of occupational disease and claim for continuation of pay/compensation (Form CA-2) alleging that he suffered from stress as a result of factors of his federal employment.

By letter dated May 20, 1999, the Office of Workers' Compensation Programs requested further information from appellant in support of his claim. Appellant responded by letter dated June 18, 1999.

By decision dated July 28, 1999, the Office denied appellant's claim as appellant had failed to provide specific details or recite specific incidents, which he alleged caused or contributed to his emotional condition. The Office also denied appellant's claim as appellant had not alleged a compensable factor of employment. Finally, the Office denied appellant's claim for the reason that no medical evidence had been submitted in support of the claim.

The Board finds that appellant has failed to establish that he sustained an emotional condition arising out of his federal employment.

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

¹ *Edward C. Heinz*, 51 ECAB ____ (Docket No. 99-992, issued September 12, 2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

(3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

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 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 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.³

In the instant case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered factors under the terms of the Act.

Appellant has made various contentions regarding administrative and personnel actions. Appellant contended that he was under constant scrutiny by his supervisor. He further alleged problems with the employing establishment regarding sick leave and the application of the Family Leave Act. Finally, appellant alleged that he was suspended on two occasions and reprimanded in front of other employees on at least one occasion.

The handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring activities at work⁴ are generally related to the employment; however, they are administrative functions of the employer and not duties of the employee.⁵ The Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence disclosed 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.⁶ There is no evidence submitted in support of appellant's allegations that he was monitored by his supervisor or denied leave, nor is there any evidence that the employing establishment acted in error or abuse with regard to these alleged incidents.

² *Ray E. Shotwell, Jr.*, 51 ECAB ____ (Docket No. 99-2032, issued September 12, 2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

⁴ *Daryl R. Davis*, 45 ECAB 907 (1994).

⁵ 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).

⁶ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

Appellant alleged that his emotional condition was caused, in part, by his two suspensions and being reprimanded in front of his coworkers. Reactions to disciplinary matters such as suspensions or reprimands are also not compensable unless it is established that the employing establishment erred or acted abusively in such capacity.⁷ Appellant has not provided any supporting evidence that these suspensions or reprimands actually occurred, let alone that the employing establishment acted erroneously or abusively.

Appellant also attributed his emotional condition to a long history of work injuries, improper medical care by the employing establishment, failure of the employing establishment to perform the necessary paperwork in processing claims, the fact that he did not receive payment for his work injury and the fact that he was in constant pain and weak. Appellant also alleged that he was required to return to work without being given a job description or completing a work hardening or similar course. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury may be compensable under the Act.⁸ However, appellant has not provided any specifics with regards to these alleged injuries or periods of alleged disability. Accordingly, appellant has not established a compensable factor of employment with regard to these allegations.

Finally, the Board notes that appellant has provided no supporting evidence for his allegation that he was provided the wrong scheme to study.

As appellant has not established that he sustained an emotional condition as a result of a compensable factor of employment, he has not met his burden of proof to establish that his emotional condition was sustained in the performance of duty.⁹

⁷ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁸ *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

⁹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence. *See Margaret S. Kryzcki*, 43 ECAB 496, 502-03 (1992).

The July 28, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.¹⁰

Dated, Washington, DC
July 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹⁰ Appellant submitted additional evidence after the issuance of the July 28, 1999 decision. The Board, however, may not review evidence for the first time on appeal that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting his evidence along with a request for reconsideration to the Office.