U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN D. KEMP and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

Docket No. 00-719; Submitted on the Record;
Issued June 21, 2001

DECISION and ORDER

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

The issue is whether appellant met 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 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'

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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).

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

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]

In the present case, on March 20, 1998 appellant, then 50-year-old mailhandler, filed a claim for occupational disease alleging he sustained an aggravation of his preexisting bipolar disorder as a result of a February 27, 1998 altercation with his supervisors, during which he was falsely accused of refusing to stay for overtime. He stopped work on February 28, 1998 and returned to work March 7, 1998. In a narrative statement submitted in support of his claim, appellant described several additional factors and situations he believed contributed to his emotional condition. By decision dated June 4, 1998, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. On June 18, 1998 appellant requested an oral hearing, and by decision dated October 5, 1999 and finalized October 6, 1999, an Office hearing representative affirmed the prior denial. The Office hearing representative additionally noted that, subsequent to his request for an oral hearing, appellant had filed four separate claims for recurrences of disability and had submitted additional evidence in support of these claims. The Office hearing representative found that as the original February 27, 1998 injury on which the recurrences were predicated had not been accepted, the recurrence claims must also be denied. The hearing representative informed appellant that if he felt the recurrences of disability qualified as new injuries, he could pursue the recurrences as new claims. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant specifically asserted that on February 27, 1998 when he was working his normal 10:00 p.m. to 6:30 a.m. shift, his supervisor, Laura Jackson, came to him at 5:27 a.m. and asked him if he wanted to stay late for overtime. He stated that he told her no, he did not want to work, but at 5:33 a.m. she returned and told him that her supervisor had told her to make the first four people on the "overtime desired" list stay and work. Appellant stated that he told her that the contract provided that she take names from the bottom of the overtime desired list and that in any event, it was after 5:30 and therefore less than the one hour notice required by the contract. He asserted that Ms. Jackson then walked away without telling him to stay and work. Appellant stated that later that evening, at the beginning of his next shift, he was called into his supervisor's office for a fact finding meeting, falsely accused of refusing to stay for overtime and threatened with a letter of warning for failure to follow orders. He stated that the stress of this meeting brought on a hypomanic episode, causing him to be disabled for a week. Appellant additionally stated that many of his supervisors were tyrannical incompetent and did not know how to deal with people. He further stated that his supervisors refused to accept his bipolar disorder as a true sickness and instead treated him as a malingerer, ignoring his psychiatrist's notes, denying his

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

[6] *Id.*

requests for sick leave and unfairly issuing many letters of warning and one 7-day suspension for poor attendance.

With respect to appellant's allegation that his supervisors falsely accused him of refusing to stay for overtime denied his requests for sick leave and unfairly issued letters of warning and a suspension, the Board finds that these allegations relate 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.[7] Although matters such as disciplinary actions, leave requests, the assignment of work duties and overtime, and investigative interviews are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[8] 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.[9]

In support of his claim that on February 27, 1998 he was falsely accused of refusing to stay for overtime, appellant submitted copies of the memoranda of understanding between the employing establishment and the National Postal Mailhandlers Union dated November 21, 1994 and November 21, 1998, as well as copies of the complete bound agreements of the same dates. The bound agreement in effect on February 27, 1998 provides that "[w]hen during the quarter the need for overtime arises, full-time regular employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis." A review of the relevant portion of the memorandum of understanding further provides that "[i]n order to avoid unwarranted inconvenience to employees and their families, particularly during the late hours of the night, the employer must provide one hour advance notice to all employees of the need for overtime work. This in no way precludes the employer from assignment of overtime with less than one hour notice in emergency circumstances and *does not release the employee from overtime when notification is less than approximately one (1) hour.*" (Emphasis added.) These documents, however, do not establish that the employer committed any error with respect to the management of the overtime desired list, and appellant did not submit any additional evidence, such as witness statements, in support of his claim that he was never told to stay for overtime. Moreover, by appellant's own testimony, it was clear that he understood that he was being asked to work overtime and rather than accepting the assignment, chose to dispute the proper application of the contractual agreement.

With respect to appellant's additional allegations of unfair treatment regarding the denial of leave requests and issuance of warning and suspensions, the Board finds that appellant has submitted no evidence to support his claim of abuse or unreasonable treatment regarding these

[7] *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).

[8] *Id.*

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

additional administrative matters.[10] Thus, appellant has not established a compensable employment factor under the Act with regard to his March 30, 1998 claim.

Finally, the Board finds that this case is not in posture for a decision with respect to appellant's four claims for recurrences of disability. The Board notes that, while the Office hearing representative correctly concluded that a claim for recurrence cannot be accepted by the Office if the Office has not accepted the original injury upon which the recurrence is predicated, a review of these four claims reveals that they are actually claims for new injuries. Appellant listed the dates of recurrence as April 20, October 20, December 3 and 9, 1998, respectively and cited to specific events which occurred on those dates which he asserted aggravated his preexisting bipolar condition, causing him to lose time from work. In addition, appellant submitted witness statements in support of his claims. It is well established that a claim for compensation need not be filed on any particular form. A claim may be made by filing any paper containing words, which reasonably may be construed or accepted as a claim.[11] As appellant specifically claimed that four separate incidents led to disabling exacerbations of his preexisting bipolar disorder on four separate occasions and submitted evidence in support of these claims, the Office should develop these claims, either separately or together,[12] and issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated October 5, 1999 and finalized October 6, 1999 is hereby affirmed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
June 21, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

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

[11] *William F. Dotson*, 47 ECAB 253 (1995); *Barbara A. Weber*, 47 ECAB 163 (1995).

[12] *See Debra A. Kirk*, 39 ECAB 1257 (1988).