U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAY N. WRIGHT and U.S. POSTAL SERVICE,
POST OFFICE, Borger, TX

Docket No. 99-2249; Submitted on the Record;
Issued June 1, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim.

On August 21, 1997 appellant, then a 50-year-old letter carrier, filed a claim for "stress." Appellant submitted a statement describing incidents and conditions of his employment to which he attributed his condition and medical reports regarding his emotional condition. By decision dated April 13, 1998, the Office found that appellant had not substantiated any compensable factors of employment.

Appellant requested a hearing, which was held on November 20, 1998 and submitted additional evidence. By decision dated February 2, 1999, an Office hearing representative found that the factors cited by appellant constituted either his desire to perform different duties, or administrative actions by the employing establishment in which appellant had not shown error or abuse. The Office hearing representative also found that appellant had not substantiated his allegations of retaliation for union activities, attempts to force him to retire, or threats to send appellant to a distant post office.

By letter dated March 31, 1999, appellant requested reconsideration and submitted additional evidence. By decision dated April 27, 1999, the Office found that appellant's request was not sufficient to warrant review of its prior decisions.

The Board finds that appellant has not established that he sustained an emotional condition while 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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.

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.[1] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[2]

Appellant's primary contentions concern his work assignments after his October 13, 1995 return to work following knee surgery. Assignment of work is an employer prerogative and is considered an administrative function of the employer.[3] Appellant alleges error or abuse in his work assignments, especially in the employing establishment's assignment of fewer than eight hours a day of work from October 13 to December 18, 1995, the change in his limited-duty assignment in September 1996, and in the employing establishment's April 1997 offer of limited duty as a part-time flexible clerk.

Appellant has not shown error or abuse in any of the employing establishment's assignments of work. He has not established that the employing establishment could have provided him with eight hours a day of limited duty from October 13 to December 18, 1995. Appellant received compensation from the Office for the hours fewer than eight per day that he worked during this period.[4] He also has not shown error in the employing establishment's change of his limited-duty assignment from casing and carrying mounted routes to timekeeping in September 1996. An employee's desire to work in a different position is not compensable under the Act.[5]

Appellant also has not shown error or abuse in the employing establishment's April 25, 1997 offer of a permanent limited-duty position as a part-time flexible (PTF) clerk. The Snow arbitration decision determined that the employing establishment violated the agreement with appellant's union when it reassigned a full-time, regular, disabled current employee of the carrier craft to a PTF position in the clerk craft. This decision was issued on November 14, 1998, more than a year and a half after the employing establishment's April 25, 1997 offer. It does not show error in that offer. An August 27, 1998 agreement settling one of appellant's grievances stated that the parties recognized that the assignment of the grievant to a PTF clerk position from the

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

[2] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[3] *James W. Griffin*, 45 ECAB 774 (1994).

[4] This compensation was paid for his knee condition, not for the emotional condition that is the subject of the present appeal.

[5] *Donna J. DiBernardo*, 47 ECAB 700 (1996).

carrier craft would be consistent with a prior arbitration decision. The November 14, 1998 Snow decision distinguished the earlier decision, but this does not show that the April 25, 1997 offer was not appropriate when it was made.

The record does show error in the employing establishment's earlier offers of a PTF clerk position. The employing establishment's postmaster stated that an initial offer of this position on April 19, 1997 contained incorrect hours of work and that an amended offer contained an incorrect pay rate. These are the only errors appellant has established with regard to the employing establishment's assignments of his work.

The only other compensable factor appellant has cited and substantiated is the employing establishment's requirement that he keep a daily list of the duties he was performing in the clerk craft. Although appellant considered this an example of harassment or retaliation, it is potentially compensable only as a special duty or requirement of employment. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, for harassment or discrimination to give rises to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur.[6]

Appellant has not presented evidence of harassment or of retaliation for his union activities. In addition, the discussions with his postmaster about a postmaster position in a distant location and about whether appellant should apply for disability retirement are so far removed from appellant's performance of his duties that they cannot be covered under the Act.

Because appellant has cited and substantiated two compensable factors of employment, the Board will examine the medical evidence to determine whether it establishes that these factors contributed to his emotional condition.[7] In a report dated March 23, 1997, Dr. David R. Egerton, a clinical psychologist, noted that appellant believed that his work environment was a major contributor to his condition, but Dr. Egerton did not express agreement with appellant's belief, or cite specific compensable work factors. In a report dated August 18, 1997, Dr. Allan J. McCorkle, a psychiatrist, stated that appellant's symptoms, consistent with post-traumatic stress disorder, "were precipitated and aggravated by his reported interactions with one of his supervisors" but did not cite specific instances of such interactions. The medical evidence is not sufficient to meet appellant's burden of proof.

The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim.

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing

[6] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[7] Appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factors. *William P. George*, 43 ECAB 1159 (1992).

a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office.[8] Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.[9] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.

Appellant's March 31, 1999 request for reconsideration did not show that the Office erroneously applied a point of law, nor did it advance a point of law not previously considered by the Office. The medical reports accompanying this request do not address whether appellant has an emotional condition causally related to factors of his employment. The copies of grievances regarding appellant's clerk duties do not add anything new, nor does his wife's account of her conversation with the postmaster about appellant not being assigned eight hours of work. Appellant's January 26, 1999 response to the postmaster's comments on appellant's hearing testimony is repetitious of appellant's prior statements and also adds nothing new.[10]

The April 27, 1999 decision of the Office of Workers' Compensation Programs is affirmed. The February 2, 1999 decision of the Office is modified to find that appellant cited compensable factors of employment as specified in this decision and is affirmed as modified.

Dated, Washington, DC
June 1, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[8] 20 C.F.R. § 10.606(b) (1999).

[9] 20 C.F.R. § 10.608(b) (1999).

[10] On appeal, appellant's representative urges the Board to remand the case to the Office on the basis that appellant's January 26, 1999 response was received by the Office on the same day as the hearing representative's decision was issued and was not considered by the hearing representative. The Board declines to do so, as the Board has been able to review both the merits of the case and the probative value of the January 26, 1999 response.