U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD KINNERSLEY and U.S. POSTAL SERVICE,
NORTH ATLANTA CARRIER FACILITY, Atlanta, GA

Docket No. 00-1386; Submitted on the Record;
Issued March 8, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

On August 17, 1998 appellant, then a 52-year-old city letter carrier, filed a claim alleging that on August 7, 1998 he first realized that stress was caused or aggravated by factors of his employment.

In response, the employing establishment and appellant submitted factual evidence. Appellant also submitted medical evidence.

By decision dated March 19, 1999, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty.

In an April 18, 1999 letter, appellant requested an oral hearing before an Office representative.

By decision dated November 19, 1999, an Office hearing representative affirmed the March 19, 1999 decision. The hearing representative found that, although appellant's request that the employing establishment perform a route count constituted an administrative matter, the employing establishment committed error in failing to do so at the "earliest possible" time in accordance with a mediation decision. Thus, appellant had established a compensable factor of employment. The hearing representative found, however, that the medical evidence of record, was insufficient to establish that appellant's emotional condition was caused by the accepted compensable employment factor.

In a February 13, 2000 letter, appellant requested reconsideration of the hearing representative's decision.

By decision dated April 18, 2000, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was irrelevant.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to 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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.[1]

Perceptions and feelings alone are not compensable. 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.[2] 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 (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[3]

In a September 3, 1998 narrative statement, appellant alleged that he was harassed and that he was unable to complete his route within eight hours as ordered by his supervisor. He alleged that he was screamed at because he had on a shirt with an outdated patch on it. Appellant contended that other employees were not properly dressed in their uniforms. He further alleged that he was screamed at because he went to the bathroom without permission. Appellant contended that he was written up for going two miles per hour over the speed limit, that he was over two hours fast in the office and made over one hour of overtime. He also contended that his route was moved back to the mailroom to case mail by his manager and that his case was set up away from everyone else in the office. Appellant further contended that his manager stopped

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

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

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

him on the workroom floor and told him that he had not done anything for 45 minutes and that when he responded that was not true and walked away, his manager screamed at him in front of his peers and she told him not to walk away. He stated that his paychecks were short. Finally, appellant alleged that a customer told him that, while he was off from work, his replacement had told the customer that his case had been moved away from everyone else.

In an October 27, 1999 letter, appellant reiterated his allegations. He also alleged that his two to two and one-half hour commute to and from work caused his emotional condition.

In the present case, the Office properly determined a compensable factor arose within the performance of appellant's federal employment. The Office accepted that the employing establishment committed error in failing to conduct a count of appellant's route in a timely manner. The Board concurs with the Office's finding that this allegation was substantiated by the factual evidence of record and relates to the performance of appellant's assigned duties.

Regarding appellant's allegation of harassment, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[4]

In support of his allegation that he was unable to complete his route within an eight-hour workday, appellant submitted a September 2, 1999 statement from R.L. Primrose, a fellow employee. Mr. Primrose stated that the employing establishment accused appellant of using too much overtime for his route. Appellant also submitted an August 23, 1999 narrative statement from Jackie Walker, a former employing establishment union steward. Ms. Walker stated that she was called into the office with appellant when he was told to do different procedures than the other carriers and he was asked to do the impossible. In response to appellant's allegation, Alfreda D. Winston, an employing establishment customer service manager, submitted an October 19, 1998 letter providing that, appellant never expressed that he was distressed about his route. She stated, however, that only when appellant was questioned about the overtime he was making, which had not been approved in advance by a supervisor, he alleged that his route was too long. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.[5] The Board finds that Mr. Primrose's, Ms. Walker's and Ms. Winston's statements substantiate a compensable factor of employment with respect to appellant's overwork.

However, regarding his allegation that his supervisor screamed at him on three separate occasions and that his paychecks were short, appellant has not submitted sufficient evidence to corroborate his allegations. Therefore, he did not establish these as compensable factors of employment.

[4] *William E. Seare*, 47 ECAB 663 (1996).

[5] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

Appellant's allegation that he was written up for going two miles per hour over the speed limit constitutes an administrative or personnel matter. The Board has held that disciplinary actions 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.[6] 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.[7] Appellant has not submitted any evidence in corroboration of his claim to establish that the employing establishment erred or acted abusively with regard to the reprimand. Thus, appellant has not established a compensable employment factor under the Act in this respect.[8]

In support of his allegation regarding the location of his case, appellant submitted an undated note from Morrese B. Green. In this statement, Mr. Green stated that he witnessed the isolation of appellant's case. Appellant also submitted Mr. Primrose's September 2, 1999 statement that appellant was placed in a corner by himself, which could have been a form of harassment, but that he did not have any solid proof of this. Appellant submitted an August 31, 1999 note from Tina M. Dorsey, a coworker, providing that his case was isolated from the other carriers' cases. In a September 2, 1999 statement, Denise Reed, an employing establishment coworker, stated that she could confirm that during the better part of 1998, appellant's case was located in the back, in an isolated position and that appellant told her that, he had been placed there to ostracize him from others.

Concerning his allegation that he was brought into the office from the mailroom, appellant submitted a September 3, 1999 statement from Ron Gute, a coworker. He stated that appellant expressed some sentiment about being brought back into the station from the mailroom.

The location of appellant's case and his transfer to the station relate to his desire to work in a particular environment or to hold a particular position and are not compensable employment factors.[9] Therefore, appellant has not established these as compensable factors of employment.

Appellant submitted a September 3, 1999 statement from William T. Pattillo, an employing establishment employee, indicating that he had observed appellant being harassed by management. He did not identify specific work incidents of harassment by the employing establishment. Thus, appellant has not established this as a compensable factor of employment.

Regarding appellant's allegation that the employing establishment denied his request for a Form CA-2, the Board notes that the circumstances surrounding the processing of a

[6] *See Jimmy Gilbreath*, 44 ECAB 555 (1993).

[7] *See Richard Dube*, 42 ECAB 916 (1991).

[8] *See Frederick D. Richardson*, 45 ECAB 454 (1994).

[9] *Minnie L. Bryson*, 44 ECAB 713 (1993).

compensation claim bear no relation to appellant's day-to-day or specially assigned duties and are, therefore, not compensable factors of employment under the Act.[10]

In support of his allegation that the employing establishment was trying to get rid of him, appellant submitted a September 8, 1999 narrative statement from Sandra Watson, a customer of the employing establishment. Ms. Watson stated that Mr. Primrose told her that, the employing establishment was trying to get rid of appellant. The Board has held that fear of reduction-in-force, transfers, reassignments or feelings of job insecurity *per se* are not sufficient to constitute a personal injury sustained while in the performance of duty, within the contemplation and meaning of the Act.[11]

Finally, appellant's allegation that his commute to and from work caused his emotional condition does not constitute a compensable employment factor. The Board has held that the stress and strain of highway travel experienced by an employee commuting to work can be characterized as self-generated and arising from the hazards of the journey shared in common by all travelers.[12]

Although appellant has established two factors of employment, which may give rise to a compensable disability under the Act, his burden of proof is not discharged. 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 factor.[13]

In this case, there is no medical report which specifically relates appellant's emotional condition to the accepted employment factors, which included the employing establishment's delay in conducting a count of appellant's route and appellant's overtime work. In an August 31, 1999 addendum to a previous letter of the same date, Dr. Alice Heimberg, a Board-certified psychiatrist, stated that "[i]t is evident that [appellant's] recent experience with anxiety and depressive symptoms was directly related to his difficult work environment." He failed to identify the specific work incidents that were responsible for appellant's emotional condition. Therefore, this report does not discharge appellant's burden. There is no other medical evidence of record addressing a causal relationship between appellant's emotional condition and compensable factors of his employment.

Inasmuch as there is no rationalized medical evidence establishing that appellant's emotional condition was causally related to the accepted compensable employment factors, the employing establishment's refusal to conduct a route count and overwork, appellant has failed to discharge his burden of proof.

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[10] *Thomas J. Costello*, 43 ECAB 951 (1992); *George A Ross*, 43 ECAB 346 (1991).

[11] *Janice Balan*, 37 ECAB 485 (1986); *Buck Green*, 37 ECAB 374 (1986); *Peter Sammarco*, 35 ECAB 631 (1984); *Jerry Campbell*, 32 ECAB 1959 (1981).

[12] *Adele Garafolo*, 43 ECAB 169 (1991).

[13] *See William P. George*, 43 ECAB 1159, 1168 (1992).

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[14] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[15] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[16] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[17]

In support of his request for reconsideration, appellant submitted an undated copy of his October 27, 1998 narrative statement, which was previously of record. Appellant also resubmitted Ms. Walker's August 23, 1999 narrative statement. The Board has held that evidence, which repeats or duplicates evidence already in the record, has no evidentiary value and constitutes no basis for reopening a case.[18] Therefore, the narrative statements of appellant and Ms. Walker failed to satisfy appellant's burden.

In further support of his request, appellant submitted an August 23, 1999 narrative statement of Cleveland Meegs, a coworker, indicating that he saw a supervisor demand appellant to perform work in 8 hours that took 10 hours or more. He also stated that he witnessed appellant being screamed at in front of his peers on the workroom floor and that he was told to set up appellant's case, which was isolated from the other carriers. Finally, appellant submitted Ms. Walker's September 20, 1999 narrative statement providing that, after a route inspection, appellant complained about his route being adjusted to someone else, that appellant's request for a route count was never granted and that Phyllis Potts, an acting employing establishment supervisor, stated that she remembered appellant turning in a request for a route inspection, but that it could not be found.

The narrative statements of Mr. Meegs and Ms. Walker are not relevant to the issue before the Office on reconsideration, whether the medical evidence was sufficient to establish that appellant's emotional condition was caused by the accepted employment factors, the employing establishment's failure to timely conduct a route count and appellant's overwork.

[14] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.606(b)(1)-(2) (1999).

[16] *Id*. at. § 10.607(a).

[17] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[18] *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

The Board has held that evidence which does not address the particular issue involved, does not constitute a basis for reopening a case.[19]

Because appellant has failed to submit any new relevant and pertinent evidence not previously reviewed by the Office and further failed to raise any substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The November 19 and March 19, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 8, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[19] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).