

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. BARTLINSKI and U.S. POSTAL SERVICE,
POST OFFICE, Sunbury, PA

*Docket No. 99-1611; Submitted on the Record;
Issued March 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of his federal employment.

On August 15, 1996 appellant, then a postal clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained a mental illness as a result of various problems with his federal employment. He stopped work on April 13, 1996 and remains out of work. The employing establishment controverted appellant's claim.

Appellant also experienced a prior work-related injury in 1992. This claim was accepted for a back injury, for which appellant underwent surgery on March 30, 1993. He was released to return to work as of June 28, 1993.

In a decision dated July 10, 1997, the Office of Workers' Compensation Programs denied appellant's claim for benefits due to an emotional condition, noting that the evidence failed to establish that his condition arose in and out of the performance of duty. Appellant disagreed and requested an oral hearing, which was held on November 17, 1998.

In a decision dated July 8, 1999, the hearing representative affirmed the Office's earlier decision, finding that the factors identified by appellant as having caused his emotional condition were not compensable factors and that furthermore, the medical evidence did not establish that appellant's psychiatric condition was caused by his prior back injury, which appeared to have been resolved.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof in this case.

In order to establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition;

(2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.¹ Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.³ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁴

In the instant case, appellant alleges that his coworkers harassed him. Among the numerous examples appellant listed were that his coworkers stated that while he was out on disability he was on vacation and they were working, that they talked about him behind his back, that they made him feel as if he was not wanted, that they called him names and that they "looked at him like he was not worth a dime."

For harassment to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁵ Unsubstantiated allegations of harassment are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.⁶

In the present case, the record is devoid of any evidence that the alleged harassment of appellant occurred. The only evidence in the record that these incidents occurred is appellant's unsubstantiated allegations. Furthermore, the statements provided by appellant comment generally on his being on the receiving end of negative comments and behavior, but provided

¹ *James P. Guinan*, 51 ECAB ____ (Docket No. 99-1260, issued August 1, 2000); *see also Kathleen D. Walker*, 42 ECAB 603 (1991).

² *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

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

⁴ *James P. Guinan*, *supra* note 1.

⁵ *James E. Norris*, 52 ECAB __ (Docket No. 98-2293, issued October 5, 2000); *Michael Ewanichak*, 48 ECAB 354 (1997).

⁶ *James E. Norris*, *supra* note 5.

few specific details pertaining to the individuals involved and the time and place of the occurrence.

Appellant also alleged that his coworkers did not get him timely help despite the fact that he had threatened violence. Appellant also alleged that the employing establishment showed confidential files to other workers, a charge which was denied by the employing establishment. These activities, if they occurred, were not in the performance of appellant's duties and accordingly, could not be considered compensable factors of employment.

Appellant alleged that he was forced to work outside of his work limitations. The Board has held that being required to work beyond ones physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.⁷ However, appellant has failed to submit sufficient evidence to corroborate his allegation. Furthermore, the employing establishment specifically denies this allegation.

Appellant's allegation that he was forced back to work before he was ready was also denied by the employing establishment. Furthermore, appellant's allegations are contrary to the opinion of his treating Board-certified orthopedic surgeon, Dr. Paul S. Lin, who released appellant to return to work on June 28, 1993.

The Board notes that appellant's psychologist, Dr. John Gerdes, makes frequent statements that appellant's depression was the result of his "medical condition." If appellant's emotional condition was the result of his previous, work-related injury, this could be a compensable factor. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional condition that is causally related to the accepted compensable employment factors.⁸ However, Dr. Gerdes' opinion does not provide a well-reasoned rationale as to why appellant's previously accepted back condition, from which he was released to work, caused appellant's significant emotional problems. Instead, Dr. Gerdes mainly discusses appellant's perceived problems with the employing establishment that did not constitute compensable factors. In fact, in Dr. Gerdes' initial reports, appellant's back condition was rarely discussed. The Board also notes that, although Dr. Gerdes attributes appellant's emotional condition to his physical injury, it is not clear that he is referring to appellant's prior back injury, as appellant had other serious physical problems, including hyperparathyroidism and pulmonary illness.

Appellant further submitted a copy of a decision of the Social Security Administration that awarded him benefits for his emotional disability. In this regard, appellant infers that because he was awarded benefits for disability purposes, he is disabled for compensation purposes under the Act. In *Hazelee K. Anderson*,⁹ the Board noted that entitlement to benefits under one act does not necessarily establish entitlement to benefits under the other.¹⁰ The

⁷ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

⁸ *Ernest St. Pierre*, 51 ECAB ___ (Docket No. 99-467, issued August 14, 2000).

⁹ 37 ECAB 277 (1986).

¹⁰ *Id.* at 282-83.

findings of other administrative agencies are not controlling in proceedings under the Act, which is administered by the Office and the Board. A determination made for disability purposes is not determinative of the extent of physical disability or impairment for compensation purposes. The two relevant statutes (Social Security Act and the Federal Employees' Compensation Act) have different standards of medical proof and the question of disability found under one statute does not provide disability under the other.¹¹ Under the Federal Employees' Compensation Act, for a disability determination, appellant's injury must be shown to have arisen during the course of his employment due to compensable factors of his federal employment. Under the Social Security Act, conditions which are not work related may be considered in determining disability. For this reason, the decision of the Social Security Act finding appellant disabled is not binding upon the Office in the adjudication of appellant's claim under the Federal Employees' Compensation Act.

Inasmuch as appellant failed to substantiate or implicate a compensable employment factor as a cause of his claimed emotional condition, the Office properly denied his claim for benefits due to an emotional condition.

The decision of the Office of Workers' Compensation Programs dated January 8, 1999 is hereby affirmed.

Dated, Washington, DC
March 21, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹¹ See also *Daniel Deparini*, 44 ECAB 657 (1993); *John P. Hurley*, 34 ECAB 494 (1982).