

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIS SISLEY and U.S. POSTAL SERVICE,
POST OFFICE, Cedar Rapids, IA

*Docket No. 01-25; Submitted on the Record;
Issued October 5, 2001*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office of Workers' Compensation Programs hearing representative dated January 18, 2000, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹

Following the hearing representative's January 18, 2000 decision, on April 12, 2000 appellant requested an appeal before the Board, which was docketed as No. 00-1704. However, by letter to the Board dated May 18, 2000, appellant requested that the appeal be withdrawn. The Board granted his request on July 28, 2000 by issuing an Order Dismissing Appeal.

By letter to the Office dated May 24, 2000, appellant requested reconsideration of the January 18, 2000 decision and submitted additional evidence, including his own additional arguments, a National Association of Letter Carriers (NALC) Intervention Team report regarding the Iowa City employing establishment, an intervention report from Michael Birkett, a union representative, regarding a November 16, 1999 review of the Iowa City employing establishment, copies of arbitration rulings between the employing establishment and the American Postal Workers' Union dated January 22 and May 9, 2000 and copies of coworker statements regarding job conditions at the Oskaloosa employing establishment.

Appellant requested reconsideration and argued that the working conditions at the Iowa City branch of the employing establishment were stressful and hostile and that management

¹ By decision dated January 18, 2000, the hearing representative affirmed a December 2, 1998 Office decision, which found that appellant had failed to implicate any compensable factors of his employment in the development of his alleged emotional condition.

created this hostile environment. Appellant argued that the accompanying evidence documented harassment and intimidation by management, especially by postmaster Michael Helms.

The November 24, 1999 report from Mr. Birkett concluded, after interviewing several people, that there were serious problems at the Iowa City branch, but no specific incidents were documented nor were any recommendations proffered.

The NALC team report identified multiple areas where friction arose and it recommended improved communication and feedback between management and clerks/carriers. The team concluded that Iowa City was a well-run office, but that some management personnel lacked people skills.

The copies of the arbitration agreements pertained to grievants not related to or including appellant.

The feedback from personnel at the Oskaloosa branch of the employing establishment discussed incidents unique to that employing establishment branch.

By decision dated August 24, 2000, the Office denied modification of the January 18, 2000 decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office found that the evidence did not establish that appellant was harassed or intimidated by management. It found that the Team Intervention report did not represent a formal third-party ruling which established error or abuse on the part of the employing establishment. The Office also noted that the arbitration rulings involved people other than appellant and, therefore, were not applicable to appellant's circumstances. It further found that the Oskaloosa employee statements had no bearing on specific allegations of harassment at the Iowa City employing establishment and were, therefore, of little probative value. The Office found no evidence of administrative error or abuse and found that management had the authority to question appellant, direct his conduct and monitor his work and that his dissatisfaction regarding that authority was not a compensable factor of his employment.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Generally, speaking when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁶

When working conditions are alleged as factors in causing disability, the Office, 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.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹ If the evidence fails to establish that any compensable factor of employment is implicated in the

³ *Id.*

⁴ *Donna Faye Cardwell*, *supra* note 2; *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *See Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁷ *See Barbara Bush*, 38 ECAB 710 (1987).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In the present case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.

Appellant alleged that he was harassed and intimidated by management. He did not allege that he developed an emotional condition arising out of his regular or specially assigned duties, or out of specific requirements imposed by his employment. He alleged, for the most part, that his condition was caused by supervisory harassment and intimidation. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹⁰ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹¹

In this case, appellant alleged that he was "harassed" by being monitored by supervisors, both in the office and while on the route, by being criticized for his time management, by having leave denied by supervisors, by being given letters of warning and because the whole work environment was hostile. The Board notes that monitoring employees was a supervisory duty and did not relate to an employee's duties. It further notes that performance appraisals and critiques, including monitoring, leave usage and letters of warning were all administrative supervisory duties and personnel matters which are unrelated to appellant's specifically assigned duties and hence, absent evidence of error or abuse, are not compensable factors of appellant's employment.¹² Moreover, appellant has presented insufficient evidence establishing that any of these incidents occurred as alleged.

The Board finds that appellant has failed to establish any action or provide information regarding any corroborated incidents constitutes harassment. Appellant has the burden of establishing a factual basis for his allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence, did not demonstrate administrative error or abuse and have been refuted by statements from appellant's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment or harassment since appellant has not established a factual basis for them.

Appellant also alleged that he had to work in a work environment made hostile due to management. The Board has held that determinations by the employing establishment concerning the work environment are administrative in nature and are not a duty of the

¹⁰ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹¹ *Ruthie M. Evans*, *supra* note 8.

¹² See *Harriet J. Landry*, 47 ECAB 543 (1996); *O. Paul Gregg*, 46 ECAB 624 (1995) (performance assessment not harassment); *Martha L. Watson*, 46 ECAB 407 (1995) (denial of leave did not constitute harassment); *Daryl R. Davis*, 45 ECAB 907 (1994) (monitoring of work is an administrative function); *Barbara J. Nicholson*, 45 ECAB 803 (1994) (disciplinary actions and letters of warning are administrative function).

employee.¹³ Therefore, absent specific corroboration or evidence of instances of error or abuse, a work environment perceived by appellant as hostile is also not a compensable factor of employment.

As appellant has not presented any corroborated evidence of harassment, intimidation, or administrative error or abuse, he has failed to implicate any compensable factor of his federal employment in the development of his emotional condition.

Accordingly, the August 24 and January 18, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹³ See *Merriett J. Kauffman*, 45 ECAB 696 (1994).