U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD B. EINARSON and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

Docket No. 00-348; Submitted on the Record;
Issued September 6, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

On October 13, 1995 appellant, then a 60-year-old letter carrier, filed a claim[1] alleging emotional distress by supervisor Rich Bradley and acting general manager Thomas Reardon on October 3, 1995. Appellant stated that the date of injury was October 7, 1995. The Office assigned the case file number 010333277. By decision dated March 25, 1996, the Office denied appellant's claim of an emotional condition arising from work factors prior to October 7, 1995. By decision dated October 8, 1996, the Office denied modification of its decision. By decision dated December 3, 1997, the Office modified the October 8, 1996 decision to reflect two employment factors arising out of and in the course of employment, but denied the claim on the grounds that appellant's condition was not causally related to the accepted factors of federal employment.

On November 13, 1995 appellant filed a notice of occupational disease alleging that his stress disorder was caused by stressful working conditions from October 3, 1995 onward. The Office assigned the case file number 010354766. By decision dated August 14, 1998, the Office denied the claim on the grounds that the evidence was insufficient to establish that appellant's emotional condition and illnesses had arisen in the performance of duty. The Office noted that the incidents which appellant had alleged to have caused his emotional condition from October 3, 1995 to March 26, 1996 were previously raised and addressed in the prior decisions.

[1] The record reflects that appellant filed an emotional claim with a date of injury of November 9, 1987, while employed as a computer clerk with a different employing establishment. The Office of Workers' Compensation Programs assigned the case file number 010269597. By decision dated April 10, 1989, the Office denied the claim. By decision dated April 6, 1990, the Board affirmed the April 10, 1989 Office decision, in Docket No. 89-1227 (April 6, 1990).

By decision dated August 31, 1999, the Office denied modification, after performing a merit review, of its decision dated August 14, 1998.

On January 20, 1999 appellant filed another claim for an emotional condition also with a date of injury of October 3, 1995. The Office assigned the case file number 010363824. By decision dated August 26, 1999, the Office denied the claim for failure to establish an injury within the performance of duty.

The Board's jurisdiction to consider and decide appeals from final Office decisions extends to those decisions issued within one year of the filing of the appeal.[2] Appellant filed his appeal with the Board on September 11, 1999. In his September 11, 1999 letter, to the Board appellant specifically requested an appeal of the Office's decision dated August 31, 1999. Inasmuch as appellant specifically requested review of the Office's decision of August 31, 1999, the Board will not address appellant's emotional condition claim in the Office's decision of August 26, 1999.

The Board has carefully reviewed the record evidence and finds that appellant has not established that he sustained an injury within the performance of his federal duties.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[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 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 or her 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.[4] 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.[5]

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

[2] *See* 20 C.F.R. § 501.10(d)(2).

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

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

adversely affected by employment factors.[6] 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.[7]

The Board notes that the Office made findings in this case with respect to several factors of employment it found, which occurred in the performance of duty and incidents it found were not established as occurring as alleged or which were outside the scope of coverage under the Act from October 3, 1995 to March 26, 1996.[8]

Appellant has alleged stress as a result of having his leave requests denied; stress as a result of failed attempts at obtaining a copy of the fitness-for-duty evaluation report; stress as a result of receiving disciplinary letters and letters of warnings pertaining to a November 16, 1995 driving infraction for having a radio on the dashboard of appellant's postal vehicle, a December 15, 1995 letter of warning for having a loose object (bag of pretzels) on the dash board of appellant's postal vehicle and a March 26, 1996 disciplinary letter regarding a seven-day suspension for failure to perform duties in a satisfactory manner. Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave and unreasonably delayed the acquisition of a copy of the fitness-for-duty evaluation, 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.[9] Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[10] 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.[11] In this case, appellant has not established a compensable employment factor under the Act with respect to administrative matters as the evidence is not sufficient to establish error on the part of the employing establishment.

Regarding appellant's allegation that he suffered stress as a result of having been ordered to report to Mr. Reardon for reassignment, the Board has previously held that the denials by an

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[6] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

[8] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.13(b) (June 1995), which provides that the claims examiner must distinguish between those workplace activities and circumstances that are factors of employment and those which are outside the scope of employment for purposes of compensation.

[9] *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).

[10] *Id.*

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

employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.[12] Moreover, the assignment of work duties are administrative functions of the employer and, absent a showing of error or abuse, are not considered an employment factor.[13]

Appellant has alleged that he suffered stress as a result of a typographical error on a letter from supervisor Rich Boyle addressed to "8 Deadly Street" as opposed to the correct mailing address of "8 Dudley Street." To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[14] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[15] In the present case, appellant's belief that the action of the employing establishment was harassing and viewed as a veiled threat that management was out to get him is not substantiated or corroborated[16] and, therefore, appellant has not submitted sufficient evidence to establish that he was harassed against by his supervisor through the typographical error.[17] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment. Appellant's perception of ill intent on the part of his employer is not a compensable factor of employment.

In its December 3, 1997 decision, the Office identified two compensable factors of employment. The first event occurred on October 7, 1995 when a postal supervisor, Mr. Bradley, inappropriately joked about a 14-day suspension as a consequence of the October 3, 1995 events. The second factor was the erroneous suspension of appellant's government driver's license, effective February 13, 1996, as found in a December 15, 1996 arbitrator's decision. The Office found that although appellant established two compensable factors of employment, the weight of the medical evidence belonged to Dr. Alfred Jonas, a Board-certified psychiatrist and Office referral physician, who concluded that appellant's condition from October 1995 through August 1997 was related to his "perceptions" about the continuing problem interactions between himself and various postal supervisors. He further opined that there was no objective evidence to indicate that appellant's condition was worsened or aggravated by the two incidents identified as compensable factors.

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[12] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[13] *Richard J. Dube, supra* note 11.

[14] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[15] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[16] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[17] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

The Board notes that the opinion of appellant's treating physician, Dr. David W. Trimble, a psychologist, is of diminished probative value. In a May 13, 1996 report, Dr. Trimble stated that he saw appellant on October 11, 1995 and had diagnosed appellant with adjustment disorder, with mixed anxiety and depressed mood. Dr. Trimble advised that the management practices at the employing establishment had caused appellant's condition. He noted that by October 27, 1995, in the face of continued workplace stress, appellant's condition worsened and he had advised appellant to promptly remove himself from any situation which generated extreme stress. Dr. Trimble stated that unfortunately, not only did the intense, punitive practice of management with regard to appellant's employment persist, but appellant then had the additional stress of interference with his efforts to protect both his health and his rights. He noted the reports of Dr. Patricia Cossio, a psychiatrist, in linking employment conditions as the cause of appellant's diagnosed acute stress disorder. These included appellant's difficulty in obtaining a copy of the employing establishment's fitness-for-duty evaluation report combined with a "string of punitive management sanctions" and "relentless, punitive pressure."

The Board notes that the incidents which Dr. Trimble referred to are not compensable factors of employment as they lack any showing of error or abuse on the part of the employing establishment. Although the handling of disciplinary actions, leave requests and failure of the employer to secure a requested fitness-for-duty report are generally related to employment, they are administrative functions of the employer and, absent any showing of error or abuse on the part of the employing establishment, are not a compensable employment factor under the Act.[18] Moreover, as Dr. Trimble's report fails to discuss those employment factors, which were deemed compensable and is devoid of a reasoned medical opinion causally relating the diagnosed condition to those compensable factors, his report is of diminished value.

The Board finds that the weight of the medical evidence rests with the well-considered opinion of Dr. Jonas. He had a detailed statement of accepted facts distinguishing between factors of employment and nonfactors of employment, a complete and accurate history, appellant's condition prior to the first event identified as a compensable factor of employment and each event identified as stress inducing thereafter. Dr. Jonas concluded that there was no evidence to indicate that appellant's condition was worsened or aggravated by the two compensable employment factors. He opined that appellant's condition was self-generated in that it was causally connected to personal and interpersonal conflicts unassociated with factors of federal employment. Accordingly, the weight of the medical evidence as represented by Dr. Jonas' opinion indicates that appellant's condition was not related, either by direct cause or aggravation, to the two incidents identified as compensable employment factors.

Appellant also alleged other work incidents which caused him stress in 1997 and 1998. The Board finds that appellant has not established a compensable work factor that is substantiated by the record. The Board further finds that appellant has failed to establish that the employing establishment either erred or acted abusively or unreasonably in the administration of personnel matters.

[18] *See supra* note 9.

There is no probative evidence to establish appellant's allegation that on May 31, 1997 an acting supervisor, Mickey Coppinger, ordered appellant to go home as he was not needed, even though appellant was scheduled to work his bid assignment. Appellant asserted that Mr. Coppinger became upset when he informed the supervisor that he was under physician's orders to restrict his activities as a result of work-related stress disorder and Herpes Zoster ('shingeles'). As there is insufficient evidence to establish that this situation arose in the manner alleged or that the Mr. Coppinger made such a comment, this allegation is not a compensable factor of employment.

There is no probative evidence to establish appellant's allegation that his employer intentionally denied him his right to respond to a confidential employee telephone survey by never forwarding the letter to him although it was sent to his work address. As appellant has not provided sufficient evidence to support the allegation that the employer intentionally denied appellant's right to respond to such survey, this allegation is not a compensable factor of employment. Additionally, the record reflects that the grievance related to this matter was denied.

Both a grievance and the employer's denial support that there is no probative evidence to sustain appellant's allegation that the employer refused appellant's request for emergency treatment on August 1, 1997. As such, this allegation is not a compensable factor of employment.

With respect to appellant's allegation that on June 11, 1997 he was ordered by his supervisor not to speak with his union representative's during his break and ordered to take breaks outside of the building, the evidence of record supports that Office's finding that the occurrence of this incident was verified. However, the record is devoid of any evidence that the supervisor acted unreasonably in the administration of a personnel/administrative matter to afford coverage.

Regarding the letter of warnings appellant received, the Board has held that disciplinary matters concerning an oral reprimand, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity.[19] As such, they only constitute a compensable factor of employment if the claimant establishes that the employer erred or acted abusively or unreasonably in carrying out its administrative function.[20] An August 1, 1997 letter, of warning was issued for failure to follow the supervisor's instructions. An August 9, 1997 letter, of warning for failure to be regular in attendance was also issued. As there is no evidence of error or abuse in the issuance of these letters of warning, appellant's reaction to those letters is not compensable. Moreover, the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[21] Thus, although a March 20, 1998 letter of warning, issued to appellant for failure to be in regular attendance, was subsequently removed from appellant's record by mutual agreement of the parties during a prearbitration settlement, the

[19] *Gregory N. Waite*, 46 ECAB 662, 673 (1995).

[20] *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

[21] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

fact that the disciplinary action was removed does not establish that the employing establishment acted in an abusive manner towards appellant. Accordingly, any reaction appellant experienced is not compensable and is considered self-generated.

Appellant was issued a December 15, 1997 letter, of warning for driving while drinking coffee. Appellant asserted that on December 10, 1997 supervisor Hobbs had requested that appellant do him a favor and pick up a truck that had been repaired. Appellant stated that at the time the favor was asked, he was drinking coffee and that his supervisor had ordered him to drink the coffee while he was carrying out the assignment. There is no probative evidence to show that the employing establishment erred or acted abusively in issuing the December 15, 1997 letter, of warning and the grievance on such matter was denied. As such, this allegation is not compensable.

Eight letters of warning were issued on December 24, 1997 for parcels not being delivered. However, as appellant has not provided specific details of the events surrounding the letters of warning, his reaction to those letters of warning are not compensable as it is an administrative function of the employer.

There is no probative evidence to establish that the employing establishment erred or acted abusively in the administrative of the following personnel and/or administrative matters. The ordering of and administration of a fitness-for-duty examination on August 12, 1997, of which appellant was found fit for duty. A September 2, 1997 order to report to work immediately, following a period of absent without leave. Although appellant attended jury duty on September 29, 1997, which was a nonscheduled day, the denial of the employer to pay for jury duty was not in error as the grievance filed specifically found that management does not have to pay for jury duty on a nonscheduled day.

As there is no evidence indicating that the employing establishment erred or acted abusively in denying sick leave on various occasions between December 18, 1997 and January 8, 1998, including a period of hospitalization in July 1996, such reaction to the denial of leave is not in the performance of duty. Moreover, the grievance filed in such matter was denied. Additionally, appellant has not provided specific details of his allegation that he experienced a severe stress reaction, which required him to leave on December 18, 1997 to see whether appellant's subsequent denial of sick leave was unreasonable.

Appellant alleged that his truck broke down due to poor maintenance by the employing establishment on January 12 and 13, 1998, which caused him stress. The maintaining of postal vehicles is an administrative function of the employer. Absent any showing of error or abuse in the maintenance of such vehicles, this reaction would not be considered compensable.

On January 14, 1998 appellant stated that supervisor Paul Casino interrupted appellant while he was writing grievances and asked appellant to do late relays, which is not part of his job description. Appellant further stated that his supervisor inquired whether appellant had punched out for union time. Appellant stated that he complied with the supervisor's request. He related that his truck broke down, so he went to Somerville to get it repaired. When his truck would not start later, appellant stated that he asked for and the supervisor denied appellant's request to get someone to do his evening collection duties. Appellant alleged that his supervisor made

unreasonable demands on him to perform tasks beyond his bid assignment while he was engaged in the stressful job of preparing grievances and equal employment opportunity complaints. He further stated that he was not granted union time in a timely fashion and that his supervisor refused his request to have someone else deliver his evening route.

The evidence reflects that appellant was asked to do late relays at the time he was writing grievances. The evidence further reflects that the supervisor refused to assign someone to do appellant's evening collection. The Board finds that these allegations are not compensable for several reasons. First, the Board has held that matters pertaining to union activities are not deemed employment factors.[22] Thus, while appellant was asked to do late relays while he was engaged in union activities, the preparation of grievances are personnel in nature and have no relation to appellant's regular or specially assigned duties and, therefore, can not be considered a factor of employment. Moreover, as the record is devoid of any evidence to indicate that appellant had requested official time, in which to engage in such union activity, appellant's reaction to being told to do a special assignment while he was engaged in union activities is not within the performance of duty. Second there is no probative evidence to establish that appellant attempted to perform his evening collection before requesting help. Appellant's apprehension over not being able to complete future job assignments without any actual attempt to perform these duties is self-generated and not compensable.[23] Additionally, there is no probative evidence to establish that the employing establishment erred or acted abusively or unreasonably in denying appellant's request to get someone to do his evening collection. Accordingly, appellant's argument that his stress reaction resulted from frustration in not being able to complete his bid assignment is without merit.

Appellant alleged that former union steward Patrick Travis had entered into conversations with former supervisor Mr. Casino, whom appellant asserted was the principle antagonist in the actions which led to his claim and related litigation. Appellant alleged that his supervisor acknowledged that he was under pressures to harass and otherwise demean appellant. The Board finds that the evidence is not sufficient to establish appellant's allegations in this matter.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

The August 31, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 6, 2001

[22] *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997); *George A. Ross*, 43 ECAB 346, 353 (1991).

[23] *Dodge Osborne*, 44 ECAB 849, 856-57 (1993).

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member