U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTIN MULL and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

Docket No. 00-2599; Submitted on the Record;
Issued September 17, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant developed an emotional condition due to factors of his federal employment.

On June 1, 1999 appellant, then a 41-year-old postal inspector, filed a notice of occupational disease alleging that he developed stress and anxiety due to factors of his federal employment. The Office of Workers' Compensation Programs requested additional information on July 15, 1999. By decision dated January 7, 2000, the Office denied appellant's claim, finding that he had not established a compensable factor of employment.

Appellant requested a review of the written record on January 27, 2000. By decision dated July 12, 2000, the hearing representative affirmed the January 7, 2000 decision.

The Board finds that appellant has failed to establish that he developed an emotional condition due to factors of his federal employment.

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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is 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.[1]

Appellant attributed his emotional condition to unwarranted, discriminatory discipline including a seven-day suspension for failing to complete field notes and an investigation by his supervisor of the possibility of issuing discipline for failing to comply with a child support order.

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[1] *Lillian Cutler,* 28 ECAB 125, 129-31 (1976).

He stated that in 1993 he was the only inspector out of three to receive a reprimand letter due to a complaint regarding the display of weapons. Appellant stated that the employing establishment investigated him for threatening another officer.

Appellant asserted that his supervisor, Robert Thompson, subjected him to retaliatory actions and sarcastic remarks. In a June 17, 1999 statement, appellant noted that he had criticized Mr. Thompson to his superior on March 22, 1999. He stated that following this meeting Mr. Thompson became aggressive and unprofessional when inquiring about appellant's work. Appellant alleged on April 26, 1999 that Mr. Thompson badgered appellant, asking repeatedly if he understood an April 26, 1999 letter assigning a work duty. A few days later, Mr. Thompson accosted appellant in the copy room and asked repeatedly if appellant was "okay." Appellant asserted that Mr. Thompson lied to him about the location of appellant's personnel file. He alleged that Mr. Thompson failed to respond to questions regarding the file which contained documents regarding appellant's child support. Appellant alleged that his second line supervisor, Thomas Brady, stated, "If you want to do battle -- then bring it on."

Appellant alleged that he was excluded from the diversity committee. He stated that he feared for his job security. Appellant attributed his emotional condition to a performance appraisal of "met expectations" and asserted that Mr. Thompson stated that he "lost focus" over the past year. Appellant stated that he did not discuss his performance evaluation in 1998 and that Mr. Thompson did not follow procedures in allowing appellant to register his disagreement. Appellant also attributed his condition to leave denials.

In an e-mail dated April 7, 1999, Mr. Thompson listed deficiencies in appellant's work and requested specific actions. On April 26, 1999 Mr. Thompson gave appellant a direct order to complete investigative summary logs for three cases by May 7, 1999 or risk administrative action. In a letter dated May 18, 1999, Mr. Thompson proposed to issue a letter of warning charging appellant with insubordination and failure to comply with regulations. On July 17, 1999 Mr. Brady issued a letter of warning regarding the failure to complete investigative logs.

By decision dated April 7, 2000, the employing establishment found the charge of insubordination was not supported because there was no evidence of willful and intentional disobedience by appellant. However, the charge of failure to follow regulations was proven. The employing establishment reduced the July 17, 1999 letter of warning in lieu of a seven-day suspension to a letter of warning.

In a letter dated July 29, 1998, appellant's ex-wife requested that the employing establishment take any disciplinary action possible to encourage appellant to pay delinquent child support. On August 4, 1998 Mr. Thompson discussed the employing establishment's options regarding appellant's child support payments and concluded that the employing establishment would not pursue his indebtedness.

Mr. Thompson completed a statement on June 7, 1999 and asserted that he always treated appellant with respect. He agreed that appellant's file contained the July 29, 1998 letter from appellant's ex-wife, but stated that no discipline was issued concerning this matter. Mr. Thompson stated that he read the April 26, 1999 letter to appellant to prevent appellant from alleging that he did not know it contained a direct order. He stated that he entered appellant's office and stood near him to read the letter. Appellant then requested sick leave, which

Mr. Thompson granted. In a statement dated August 12, 1999, Mr. Thompson asserted that he had never made offensive remarks to appellant.

Appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluations, improperly conducted investigations and maintained files and wrongly denied leave, relate to administrative or personnel matters.[2] As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act.[3] But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[4]

In this case, appellant has failed to submit any evidence in support of his allegations of error or abuse in regard to denial of leave, file maintenance and unfair performance appraisals. However, appellant has submitted evidence that the employing establishment erred in issuing the letter of warning in lieu of a seven-day suspension on July 17, 1999. The employing establishment found the charge of insubordination was not supported and reduced the penalty to a letter of warning. Therefore, the Board finds that the employing establishment erred in charging appellant with insubordination and that appellant has established a compensable employment factor.

Appellant's allegations of harassment or discrimination are unsubstantiated. 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[5] Appellant has failed to submit evidence substantiating that either of his supervisors, Mr. Thompson or Mr. Brady, harassed or discriminated against appellant. Appellant has also failed to establish discrimination as he was not selected to the diversity committee.

Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment.[6]

Appellant has identified a compensable factor of employment concerning the letter of warning issued on July 17, 1999. However, appellant's burden of proof is not discharged by the

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[2] *See Janet I. Jones*, 47 ECAB 345, 347 (1996).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Martha L. Watson,* 46 ECAB 407 (1995).

[5] *Alice M. Washington*, 46 ECAB 382 (1994).

[6] *See Artice Dotson*, 42 ECAB 754, 758 (1990).

fact that he has established an employment factor which may give rise to a compensable disability. 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 employment factor.[7]

In support of his claim, appellant submitted a report from Dr. Philip C. Hyde, a licensed clinical psychologist. On June 21, 1999 he stated that appellant was experiencing stress in his workplace. This report is not sufficient to meet appellant's burden of proof because Dr. Hyde did not address the accepted employment factor.

Dr. Ed Beckham, a clinical psychologist, completed a report on July 12, 1999 diagnosing major depression. On July 19, 1999 Dr. Beckham attributed appellant's depression and anxiety disorder to stress at appellant's job. On April 10, 2000 he stated that appellant had experienced a period of depression and anxiety following conflict with supervisors at work, but did not describe any specific employment factors. These reports are, therefore, insufficient to meet appellant's burden of proof.

Dr. John R. Smith, a Board-certified psychiatrist, completed a report on April 17, 2000 but did not provide a diagnosis or indicate that appellant had an emotional condition due to his employment.

Appellant has failed to provide the necessary rationalized medical opinion evidence to establish a causal relationship between his diagnosed emotional condition and the accepted employment factor. The Board finds that appellant has failed to meet his burden of proof in establishing his claim.

The July 12 and January 7, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 17, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

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