

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES DEMAS, JR. and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Fort Worth, TX

*Docket No. 01-1659; Submitted on the Record;
Issued August 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition while in the performance of duty causally related to factors of his employment.

On March 7, 2000 appellant, then a 45-year-old mail processor, filed an occupational disease claim alleging that he sustained an emotional condition due to being asked by the employing establishment to provide information regarding his use of sick leave and family leave, being sent home for wearing shorts to work, being given discussions regarding unscheduled leave, being told to get behind the plastic curtain when smoking in the smoking area, being given instructions on how to perform his job, being detailed intermittently as an expeditor but not receiving the Level 6 pay of an expeditor unless he was working with another expeditor,¹ being overworked by having to expedite without help on occasion, not receiving a bonus before Christmas 1998 because he was detailed out of the area, feeling angry and demeaned by the manner in which supervisors talked to him and being asked to report to work when roads were icy and his only means of transportation was a motorcycle.²

A letter dated February 16, 2000 from the employing establishment instructed appellant to contact the attendance supervisor and provide documentation for his absence beginning January 27, 2000 because he had been absent from work since January 27, 2000 and had not contacted his supervisor or provided documentation for his absence. He was advised that failure to comply could result in his being charged with being absent without leave.

¹ The position of mail processor is a Level 4 position.

² The record shows that appellant filed grievances in 1995 through 1997 for being placed on restricted sick leave, being issued letters of warning about his use of leave, being sent home for wearing shorts and being told where to push a nutting truck. These grievances were resolved and penalties imposed against appellant were lessened. However, the Board has held that the mere fact that an employing establishment lessens a disciplinary action taken towards an employee does not establish error or abuse; *see Garry M. Carlo*, 47 ECAB 299, 305 (1996).

An undated memorandum from Supervisor Cynthia Taylor indicated that she telephoned the employees who had requested leave due to bad weather on January 27, 2000, told them that the roads were clear and asked them to come in to work. Appellant advised her that he would ride with another employee who had a car because he had a motorcycle.³

A letter dated March 16, 2000 from the employing establishment noted that appellant had telephoned January 27, 2000 requesting annual leave because he did not want to ride his motorcycle and that he was told this was not an acceptable excuse. On January 28, 2000 appellant telephoned and requested family sick leave. On February 22, 2000 he reported to work but submitted an incomplete family leave form. On March 7, 2000 appellant telephoned and stated that he sustained a work injury in January 2000.

In a response to appellant's allegations, an employing establishment representative stated that appellant was asked to provide documentation for his absences and to complete and resubmit his family leave request because it was incomplete. She stated that appellant was sent home on one occasion for wearing shorts which management felt were inappropriate for work and that other employees had been sent home to change clothes in similar situations. The representative stated that supervisors had the responsibility to give discussions to employees regarding use of unscheduled absences and it was evident that appellant was due some discussions. She denied that appellant had been harassed. The representative noted that when she told appellant that his family leave form was incomplete, he snatched it out of her hand and left work without notifying his supervisor. Appellant later indicated that he was filing a claim for an emotional condition. The representative stated that when appellant worked as an expeditor, he received the higher Level 6 pay.

Appellant also submitted medical evidence.

By decision dated July 28, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he failed to establish that his emotional condition was causally related to any compensable factors of his employment.

By letter dated August 26, 2000, appellant requested a hearing.

In a statement dated January 29, 2001, Coworker Matt L. Sanders stated that on one occasion two years previously he saw a supervisor tell appellant to get behind the curtained smoking area while he was standing outside the area with two other smokers but did not tell the other smokers to get behind the curtain.

In a statement dated February 1, 2001, Coworker Elmer T. Summers, Jr. stated his opinion that appellant had too much work while detailed as an automation expeditor. He indicated that appellant performed the job by himself but another automation expeditor had assistance when he performed the same job.

By letter dated February 22, 2001, the employing establishment stated that appellant was not overworked, was given assistance with his job except on days when mail was light and did

³ The record shows that this employee did report for work but appellant did not ride in with him.

not work any overtime hours. The employing establishment stated, regarding the smoking incident, that the supervisor was just enforcing the smoking policy and did not even know appellant's name. The representative noted that appellant was sent home to change clothes on June 17, 1996 because his shorts were inappropriately short in length but he was later paid for the day after he filed a grievance, even though he did not change clothes and return to work as instructed.

On February 2, 2001 a hearing was held and appellant testified.

By decision dated and finalized May 16, 2001, the Office hearing representative affirmed the Office's July 28, 2000 decision on the grounds that appellant failed to establish that his emotional condition was causally related to any compensable factors of employment.

The Board finds that appellant failed to establish that he sustained an emotional condition while in the performance of duty causally related to factors of his 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 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 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 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

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.⁸ If a claimant does implicate a factor of

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

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

⁷ See *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁹

In this case, appellant attributed his emotional condition to a number of employment incidents and conditions. The Board must, thus, initially determine whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that the employing establishment asked him to provide information regarding his use of sick leave and family leave, gave him discussions regarding unscheduled leave, gave him instructions on how to perform his job, did not give him a bonus before Christmas 1998 because he was detailed out of the area, asked him to report to work on a day when the weather was bad and assigned him to work as an expeditor but failed to pay him the correct wages for an expeditor. These allegations relate to administrative or personnel matters and are unrelated to the employee's regular or specially assigned work duties. Thus, they do not fall within the coverage of the Act.¹⁰ Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹¹ 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. Regarding the allegation that he was asked to report for work on a day of bad weather, an undated memorandum from Ms. Taylor indicated that she telephoned the employees who had requested leave due to bad weather, told them that the roads were clear and asked them to come in to work. Appellant advised her that he would ride with another employee who had a car because he had a motorcycle and did not wish to ride it in bad weather. However, the record shows that this particular employee reported for work and appellant did not ride with him. The evidence does not establish error or abuse by the employing establishment in asking appellant to report to work after the roads were determined to be clear. On February 22, 2000 he submitted an incomplete family leave form. An employing establishment representative stated that appellant was asked to provide documentation for his absences and to complete and resubmit his family leave request because it was incomplete. It was not error or abuse for the employing establishment to ask appellant to complete a leave form or provide documentation for absences. Regarding the discussions about appellant's use of leave, the employing establishment stated that supervisors had the responsibility to give discussions to employees regarding use of unscheduled absences and it was evident that appellant was due some discussions concerning his leave usage. There is insufficient evidence of error or abuse in the employing establishment's handling of discussions concerning appellant's leave usage. He filed grievances concerning some of these administrative actions and disciplinary actions were reduced when the grievances were resolved. However, the mere fact that personnel actions were later modified or rescinded, does not

⁹ *Id.*

¹⁰ See *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹¹ See *Anne L. Livermore*, 46 ECAB 425, 431-32 (1995); *Richard J. Dube*, 42 ECAB 916, 920 (1991).

establish error or abuse.¹² In this case, there is insufficient evidence of record to establish that the employing establishment erred or acted abusively in its handling of these administrative matters. Regarding the allegation that appellant was not paid the correct wages when he worked as a Level 6 expeditor, the employing establishment stated that whenever he worked as an expeditor he was paid the correct Level 6 wages. Appellant has provided no evidence that he was not paid the Level 6 wages at any time when he worked as an expeditor. Thus, he has not established a compensable employment factor under the Act in regard to the employing establishment's handling of administrative or personnel matters.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. He alleged that he felt angry and demeaned by the manner in which supervisors talked to him, that he was singled out and sent home for wearing shorts to work and that he was singled out when a supervisor told him to get behind the plastic curtain when smoking in the smoking area. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹³ 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.¹⁴ In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹⁵ In a statement dated January 29, 2001, Coworker Sanders stated that on one occasion two years previously he saw a supervisor tell appellant to get behind the curtained smoking area while he was standing outside the area with two other smokers. However, the employing establishment stated that appellant was not singled out while smoking when he was asked to get behind the plastic curtain. The employing establishment stated that the supervisor involved was just enforcing the smoking policy and did not even know appellant's name. Regarding the incident when appellant was sent home to change clothes, the employing establishment noted that he was sent home to change clothes on June 17, 1996 because he was wearing shorts but he was later paid for the day after he filed a grievance, even though he did not change clothes and return to work as instructed. The employing establishment noted that other employees had been sent home to change clothes in similar situations. The evidence of record does not establish that the employing establishment harassed or discriminated against appellant in these incidents. Thus, he has not established a compensable employment factor under the Act in this respect.

Appellant alleged that he was overworked because he was asked to expedite without help on occasion. In a statement dated February 1, 2001, Coworker Summers stated his opinion that appellant had too much work while detailed as an automation expeditor and indicated that

¹² *Id.*

¹³ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ See *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ 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).

appellant performed the job by himself but another automation expeditor had assistance when he performed the same job. However, by letter dated February 22, 2001, the employing establishment stated that appellant was not overworked and was given assistance with his job except on days when mail was light and that he did not work any overtime hours. The Board finds that the evidence is insufficient to establish that appellant was overworked. Thus, he has not established a compensable factor in this regard.

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 while in the performance of duty.¹⁶

The decisions of the Office of Workers' Compensation Programs dated May 16, 2001 and July 28, 2000 are affirmed.

Dated, Washington, DC
August 6, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁶ Because appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Garry M. Carlo, supra* note 2.