

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMEL A. WHITE and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 02-1559; Submitted on the Record;
Issued December 10, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On January 19, 2001 appellant, then a 25-year-old mailhandler, filed an occupational disease claim alleging that he sustained an emotional condition due to various incidents and conditions at work that culminated in his termination on January 8, 2000. The employing establishment controverted the claim.¹

In a February 20, 2001 letter, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit evidence within 30 days.

In response, appellant submitted a detailed statement of factors, which he believed contributed to his emotional condition. They included: resigning from his previous position as a computer technician to work for the employing establishment; being informed that he would have to work at night, having to forego other business opportunities; having his traumatic injury claim controverted by the employing establishment; personal matters; being given an inordinate amount of work which led to an on-the-job injury, which was contested; being forced to return to work early; being issued a wrongful letter of removal on Christmas day; having his unemployment contested; mental distress due to not being able to provide for his family; arbitration with an uncooperative employer; harassment; and discrimination.

In a January 24, 2001 report, Dr. Cassagnol Guirand, a psychiatrist, indicated that appellant complained of difficulty getting along with his supervisor, being unwilling to return to

¹ The record reflects that appellant had a subsequent claim for date of injury October 6, 1999. (#020763576). Additionally, appellant was reinstated in December 2000, but subsequently retired from the employing establishment on disability.

work and the belief that coworkers were trying to kill him. In the intake notes, Dr. Guirand stated that appellant sought treatment for mental trauma caused by being fired from his job. He indicated that appellant suffered from mental illness and was unable to perform his duties at the employing establishment.

On February 23, 2001 the Office received an arbitration panel award regarding a grievance he filed concerning his removal for alleged falsification of an application. The award determined that the employing establishment had failed to establish that it had just cause to discharge appellant and that appellant had not falsified his application for employment. The decision indicated that appellant was to be reinstated to his former position with full back pay and appropriate benefits and entitlements.

In a March 2, 1998 report, Dr. Hasaii Zajhab indicated that appellant had suicidal tendencies and diagnosed major depression.

By letter dated February 27, 2001, the employing establishment controverted the claim and cited numerous personal factors as causing appellant's condition.

In a treatment note dated March 27, 2001, Valerie Stevens, a social worker, indicated that appellant was receiving psychiatric care and therapy for depression and extreme stress further aggravated by his condition.

In a December 11, 2000 psychiatric assessment, Andrew Siegel, a Board-certified psychiatrist and intake supervisor of the Upper Manhattan Health Center, indicated that appellant was under stress as he was ordered to return to work as a mailhandler. He indicated that appellant was unwilling to return to work for the same supervisor who fired him and diagnosed depressive disorder and impulse control disorder.

In a July 12, 2001 decision, the Office found that appellant had established a compensable factor of employment;² however, he did not submit sufficient medical evidence to establish that he sustained an emotional condition due to the established employment factor.

By letter dated July 17, 2001, appellant requested a hearing, which was held on December 4, 2001.³

By letter dated December 18, 2001, the employing establishment stated that appellant was not an employee of the employing establishment at the time of his claim, but rather was in a removal status effective January 28, 2000. The employing establishment noted that personal

² The Office found that the arbitrator's decision, finding that appellant had been wrongfully removed from his employment without just cause, was a compensable factor of employment.

³ At the hearing, appellant testified that he was hired by the Postal Service in March 1999, as a mailhandler and experienced stress due to the strain of doing heavy work and pressure from his supervisors. He stated that he was diagnosed with depression before he began working for the employing establishment and the work exacerbated his condition. Appellant indicated that he did not wish to return to employment for the employing establishment and retired.

issues cited by appellant were nonjob related, therefore, not compensable and there was no medical evidence to support his lost time from work.

By decision dated February 28, 2002, the Office hearing representative affirmed the Office's July 12, 2001 decision finding that the medical evidence did not support that appellant's wrongful termination contributed to his emotional condition.

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

Workers' compensation law does not apply to each and every 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 or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically 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

Perceptions and feelings alone are not compensable. 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 factors of his federal employment.⁶ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit factual evidence establishing employment factors or incidents alleged to have caused or contributed to his condition; medical evidence establishing that he has an emotional or psychiatric disorder; and rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁷

Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

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

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 126 (1976).

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

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁹ If appellant does implicate a factor of employment, the Office should then determine whether the factual evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁰

Appellant alleged that he was lied to by the employing establishment, treated unfairly at work and was the victim of discrimination or harassment. 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 may constitute employment factors.¹¹ 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.¹² In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.¹³ Appellant alleged that supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided insufficient evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁴ Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

With regard to contesting appellant's application for disability retirement and unemployment benefits, back pay and controverting his workers' compensation claim, these events have to do with personnel matters or administrative matters. 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.¹⁵ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁶ However, the Board

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁰ *Id.*

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ 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).

¹⁴ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁵ 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).

¹⁶ *Id.*

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.¹⁷ Appellant has not established a compensable employment factor under the Act with respect to administrative matters as the evidence pertaining to these allegations fails to establish error or abuse in these administrative matters.

Appellant alleged that he was given an inordinate amount of work. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if the record substantiated such activity.¹⁸ The employing establishment controverted appellant's claim and he has not submitted sufficient evidence to corroborate his allegations.

Appellant's being wrongfully accused of lying on his application and his consequential termination is found to be a compensable factor. The arbitration decision constitutes substantial evidence in support of appellant's alleging that he was wrongfully terminated by the employing establishment. The arbitrator's decision is based on evidence that appellant did not lie on his employment application. Therefore, this is a compensable factor of employment.

In the present case, appellant has established a compensable factor of employment with respect to wrongful termination. Appellant's burden of proof is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under the Act. 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 compensable employment factor.¹⁹

The Board notes that appellant has submitted supporting medical evidence. In a January 24, 2001 report, Dr. Guirand indicated that appellant sought treatment for mental trauma recently caused by being fired from his job. He indicated that appellant suffered from mental illness and cited that he had difficulty with his supervisors. Dr. Guirand indicated that appellant was unable to perform his duties at the employing establishment. Although the medical evidence is not sufficiently detailed to meet appellant's burden of proof, appellant has submitted sufficient evidence to require further development of the evidence.²⁰ On remand, the Office should prepare a statement of accepted facts that properly distinguishes between compensable and noncompensable work factors. The Office should then obtain a reasoned medical opinion as to

¹⁷ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁸ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

¹⁹ See *William P. George*, 43 ECAB 1159, 1168 (1992).

²⁰ *John J. Carlone*, 41 ECAB 354 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

whether appellant has sustained an emotional condition causally related to the compensable work factor. After such further development as the Office deems necessary, it should issue an appropriate decision.

The February 28, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
December 10, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member