U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENT P. NOBLE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Gadsen, AL

Docket No. 01-1153; Submitted on the Record;
Issued January 11, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition arising in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied his request for reconsideration.

On March 6, 2000 appellant, then a 46-year-old clerk, filed a traumatic injury claim (Form CA-1), alleging that his depression was due to Kathryn Davis, his supervisor, ordering him to work outside of his medical restrictions and telling employees about his work restrictions. The employing establishment controverted the claim.

In a March 22, 2000 report, Dr. Judy Cook, an attending psychiatrist, diagnosed depression and stress which she attributed "primarily to problems and issues concerning his job" at the employing establishment.

In an April 12, 2000 report, Dr. Cook noted that according to appellant "and supporting documentation from his fellow employees, on March 6, 2000 his medical status was again discussed in front of his fellow employees."

By decision dated April 27, 2000, the Office denied appellant's claim on the grounds that he failed to establish any compensable factors.

Appellant requested reconsideration by letter dated April 29, 2000 and submitted statements from Berry Putnam, a supervisor, Ms. Davis, and Rick Neal and a June 26, 2000 response from the employing establishment, a copy of a March 12, 1996 job offer, an October 20, 1998 notice of change in work schedule, a September 11, 1995 medical report and a copy of an Equal Employment Opportunity Commission (EEOC) regulation.

In an April 20, 2000 statement, Mr. Putnam indicated that appellant was not required to distribute mail or box flats due to his physical condition. He noted in an April 28, 2000

statement that appellant's restrictions did not preclude him from working flats although he did not require appellant to do this work.

In undated statement, Mr. Neal noted that he heard Ms. Davis ask why appellant could not work flats and that he responded that she needed to ask appellant. Mr. Neal stated that he "jokingly said something to him about him not working the flats."

In a June 21, 2000 statement, Ms. Davis indicated that she asked appellant to work flats and that when he replied that he could not, she turned to Mr. Neal to ask why appellant could not work flats since she had seen him doing this work previously. Ms. Davis stated that she asked a shop steward if he knew why appellant could not work flats and he replied that he thought it had to do with appellant's restrictions.

By merit decision dated July 24, 2000, the Office denied appellant's request for modification.

In a letter dated July 27, 2000, appellant requested reconsideration and submitted a statement in support of this request.

On November 21, 2000 the Office denied appellant's request for merit review.

In a letter dated January 9, 2001, appellant requested reconsideration and submitted a December 7, 2000 letter from the employing establishment referring to his discrimination complaint filed on July 12, 2000 and an April 27, 1999 arbitration decision regarding the period June 14 through August 15, 1995 when appellant's medical restrictions were ignored.

On February 16, 2001 the Office denied appellant's request for merit review of his claim. The Office found that the evidence failed to support error or abuse on the part of his supervisor on March 6, 2000.

The Board finds that appellant has not established that his emotional condition arose out of the performance of duty.

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 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.[1] 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.[2]

[1] 5 U.S.C. §§ 8101-8193.

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

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.[3] If a claimant does implicate a factor of 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.[4]

In this case, appellant attributed his increased stress to public discussion of his medical restriction. By decisions dated April 14 and July 24, 200, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The Board finds that appellant's allegation regarding his supervisor's discussion of his work restrictions relates to administrative or personnel matters and is unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[5] Although the assignment and the monitoring of activities at work generally related to the employment, they are administrative functions of the employer and not duties of the employee.[6] 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.[7].

None of the evidence of record supports appellant's allegation that his supervisor disclosed his physical restrictions to his fellow employees. Appellant's reaction to her comment about why he could not work the flats appears to be self-generated. The record contains no evidence that appellant's supervisor erred or violated appellant's privacy regarding his work restrictions Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

[3] *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[4] *Id.*

[5] *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).

[6] *Id.*

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

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.[8]

The Board also finds that the Office properly denied appellant's request for reconsideration.

Under the Office's federal regulations, a claimant may obtain review of the merits of his claim by written request and identifying the decision and specific issues within the decision the claimant wishes the Office to reconsider.[9] The claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[10] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

The issue on appeal is whether appellant has submitted evidence with his July 27, 2000 and January 9, 2001 requests for reconsideration that is sufficient to meet the requirements of section 10.606(b)(2). The Board notes that the underlying claim was denied on the grounds that appellant did not allege and substantiate compensable work factors as contributing to an emotional condition.[11] Therefore, appellant must submit relevant and pertinent evidence on this issue to meet the requirement of section 10.606(b)(2)(iii).

A review of the record indicates that appellant did not submit any relevant and pertinent evidence on compensable work factors. The record contains a copy of a March 12, 1996 job offer, a notice of change in work schedule dated October 20, 1998, a September 11, 1995 medical report, a copy of an EEOC regulation, the first page of a December 7, 2000 letter from the employing establishment regarding his EEOC complaint, a statement from Dr. Cook, a December 7, 2000 letter from the employing establishment referencing his discrimination complaint filed on July 12, 2000, an April 27, 1999 arbitration decision and a July 27, 2000 statement in which appellant reiterated his allegations. This statement does not constitute new and relevant evidence. To the extent that appellant is alleging error or abuse by a supervisor,[12] there was no pertinent evidence submitted in support of such an allegation.

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[8] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 3.

[9] 20 C.F.R. § 10.608.

[10] *Claudio Vazquez*, 52 ECAB ___ (Docket No. 01-416, issued August 30, 2001).

[11] Until a compensable work factor is established, the medical evidence is not addressed; *see Margaret S. Krzycki*, *supra* note 3.

[12] It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee. The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment; *see Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

The Board finds that appellant has not submitted relevant and pertinent evidence not previously considered on the issue of compensable work factors. Moreover, appellant has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument. Accordingly the Board finds that the Office properly refused to reopen the case for review of the merits of the claim.

The decisions of the Office of Workers' Compensation Programs dated February 16, 2001, November 21, July 24 and April 27, 2000 are affirmed.

Dated, Washington, DC
January 11, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member