

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

Docket No. 02-446; Submitted on the Record;
Issued July 22, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

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

On April 22, 1999 appellant, then a 47-year-old postal manager, filed a notice of occupational disease alleging that he suffered from post-traumatic stress syndrome as a result of work factors beginning on or about January 28, 1999.¹ He stopped work on April 2, 1999 and has not returned.

On June 3, 1999 the Office advised appellant of the factual and medical evidence required to establish his claim.

In a decision dated August 24, 1999, the Office denied appellant's claim for compensation on the grounds that he failed to allege a compensable factor of employment and, therefore, failed to establish that his alleged injury arose in the performance of duty.

Appellant filed requests for reconsideration on October 1, 1999 and January 24, 2000. The Office denied modification on December 3, 1999. In a March 24, 2000 decision, the Office also denied appellant's January 24, 2000 reconsideration, finding that the evidence was insufficient to warrant a merit review of the record. Most recently, appellant filed a request for reconsideration on November 30, 2000. He submitted additional evidence and argument. The Office denied modification of its prior decisions on October 16, 2001.

¹ Appellant has a prior accepted claim for major depression, single episode which arose as a result of stress at work on November 11 and 12, 1991. On April 2, 1999 appellant filed a claim for a recurrence of disability but he was informed by the Office of Workers' Compensation Programs that he was required to file a new occupational disease claim if he was seeking compensation for an increase in disability due to the prior accepted stress condition. The prior claim has been doubled with this case under file number 16-200080.

Appellant alleges that since the beginning of his tenure as a special delivery unit manager in 1996 he has worked overtime daily, which raised his level of anxiety and emotional stress. He described the requirements of his job, relating that all incoming express mail had to be delivered by 3:00 p.m. daily without failure. Appellant also refers back to his prior accepted claim for stress when he worked as a delivery foreman. He relates that the employing establishment threatened to return him to that position. Thereafter, he became anxious with recurrent thoughts of fear and dread.

Appellant submitted a detailed statement in support of his claim, which is paraphrased below: On Friday January 22,1999 appellant was called into the office of the Acting Area Manager, Roy Garrison. He had been active in this position for approximately two months. Appellant was informed that he was being returned to front line management as a delivery foreman at Britton Station in Oklahoma City, Oklahoma. He related that he asked Mr. Garrison what his options were and was told that he had none. Appellant reminded Mr. Garrison that he had been hospitalized from front line management duties and was still on medication as a result of the injury. He then told Mr. Garrison that he needed to speak with his doctor and his wife concerning the replacement assignment.

Appellant specifically stated:

“Mr. Garrison wanted to return me to an environment where the unit was the second highest in the city in overtime.... It devastated me because I was all too familiar with that type of environment -- high overtime and shortage of staff, which were two major factors in my original hospital stay, keep in mind that four percent overtime is an expected target.”

Appellant alleged that in February 1999, his office was scheduled to have a full unit review, although a review had just been conducted in August 1998. All deficiencies were brought to his immediate attention for correction and he was instructed to complete a Management Action Plan (MAP) to be submitted to the area managers office in a timely manner, which was done. He stated:

“The action plan I submitted addressed each documented deficiency individually and indicated the corrective measures that were being implemented, albeit Mr. Garrison never reviewed my original action plan with me. Following the rescheduled unit review the harassment continued on February 22, 1999 at which time I received an official letter of warning from Mr. Garrison charging me with unsatisfactory performance and failure to properly perform duties. The letter specifically states that ‘on February 12, 1999 I failed to follow procedures to request assistance due to the mobile data collection device (MDCD) scanner system being frozen.’ This system had only been operative approximately three weeks. I shared with Mr. Garrison that on Friday, February 12, 1999 I did follow procedure and I had conducted a connectivity test Friday evening that passed. This was a holiday weekend and the system did freeze up over the weekend. The clerk on duty had no one to call, she had previously been informed to contact the area coordinator who was [not] available until Tuesday the day after the holiday. When the system freezes it results in a loss of data. On my return to work

Thursday, the day after the holiday, I was informed of the malfunction and that the area coordinator had been contacted and would be by that day (February 16, 1999) about 1:00 p.m. He did come by with Mr. Garrison and rebooted the unit and collected what would have appeared to be the problem. I told Mr. Garrison that I ran a test on Friday that passed. In the days to come the system continued to malfunction. I finally corrected the problem by connecting the [tele]phone line to the proper outgoing [tele]phone jack. The initial problem was found to be an installation oversight by the installer in the connection of the [tele]phone line. The system was on the wrong line causing one line to override the other and shut the system down. The letter of warning to date has [not] been removed after requested removal.”

Appellant alleged that he has been continuously blamed for lost data with the use of this new system. Express mail multi scans with the new system continued to be a problem, so he implemented two plans of action to aid in internal documentation, which were to call the 1-800 help line to verify scans, which were being verified as transmitted. He also directed employees to record piece counts scanned and to initial individual scanned times of transmission and dates.

He further described his feelings:

“The continued onslaught of harassment mushroomed on March 31, 1999 when I was again called to Mr. Garrison’s office and given a letter informing me that the performance of my office was totally unsatisfactory and I was directed in writing to complete a action plan of correction. Along with verbal and weekly action plans, I was mandated to meet with Mr. Garrison as well as meet his expectations until notified differently. This autocratic, micro management, dictatorship control consumed mentally.

“This letter also contained the same language of threats, suspension, reduction in grade or pay or removal from the [employing establishment].

“After two nights of sleeplessness and anxiety, depression and panic attacks, I became ill from the tyranny of Mr. Garrison and called in sick April 2, 1999, I had my scheduled visit of psychotherapy that same day. The visit resulted in a prescription resulted in a prescription for tranquilizers to help me rest.

“Because of the state of anxiety and depression I was experiencing I was scheduled for a follow-up visit on Tuesday, April 6, 1999. The decision of the doctor was to remove me from the work environment indefinitely with a diagnosis of [p]ost[-][t]raumatic [s]tress [d]isorder. I am currently continuing weekly psychotherapy and prescribed medication. In the course of my psychotherapy session it is clear in my mind that I am being singled out by Mr. Garrison. I have been singled out negatively because of my disability. I am the victim of harassment through written verbal violence. This is a brief summary of the events that took place that prompted my request for the EEO [Equal Employment Opportunity] office to intervene and investigate the harassment, discrimination and retaliation brought about by Mr. Garrison. His action led to the exasperation

and reoccurrence of my psychological and physiological symptoms. Mr. Garrison had foreknowledge of my condition, provided to him by me verbally (January 22, 1999) as well as a medical narrative dated, January 28, 1999, disclosing my condition as it pertained to my employment with the [employing establishment]. Mr. Garrison blatantly ignored my physician's warnings not to harass me mentally and furthermore retaliated against me for having a disability. His threats of termination, pursuit of unjust disciplinary action, unjust blame for improperly installed/malfunctioning equipment and his unprecedented dictatorial mandate for action plans all contributed to my mental anguish and further degenerated and aggravated my existing physical and mental disability."

In a letter dated April 14, 1999, Mr. Garrison, a manager for the employing establishment and appellant's immediate supervisor, indicated that he met with appellant during the month of January 1999 to discuss moving him to another work assignment, "presented to him as developmental training to enhance his promotability and was offered on a voluntary basis." Mr. Garrison stated that appellant turned down the transfer on the advice of his physician. He stated that on February 4 and 5, 1999, an operation review was conducted on the special delivery section of which appellant had been the supervisor for an extended period of time. It was shown that many previous recommendations following a July 1998 review had not been followed so a letter of warning was issued to appellant on February 19, 1999 for unsatisfactory performance. This letter was also issued because of a situation on February 14, 1999 when a unit scanner system shut down and went unchecked for an entire holiday weekend until complaints came in regarding failed express mail. Mr. Garrison noted that it had been appellant's responsibility to ensure that the scanner worked properly before he left for the weekend. He stated that on March 31, 1999, a second letter was sent to appellant setting forth the requirements and timetables for the implementation of the recommended plan for improved performance.

In a July 7, 1999 statement, the employing establishment maintained that appellant had never been required to work overtime in his position and that there is no record of any offices supervised by appellant as being understaffed.

The Board has duly reviewed the record and finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty.

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.³

Workers' compensation law is not applicable 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 coverage 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 comes within coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.⁶ However, the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁷ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁸

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under Act absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor in general must be allowed to perform his or her duty and that, in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisor's management style or actions taken by the supervisor will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.⁹

The Board also finds that appellant was not the victim of harassment by Mr. Garrison. Although appellant was fearful of returning to his prior position, it appears from the record that the proposed transfer was only made to assist appellant in obtaining a promotion. There is no

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁶ *See Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

⁷ *See Elizabeth Pinero*, 46 ECAB 123 (1994).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Constance I. Galbreath*, 49 ECAB 401 (1998).

factual support that Mr. Garrison purposefully tried to scare appellant by offering him the transfer and when he was notified by appellant's physician that a transfer was not medically feasible, the job was not forced on appellant. It was and remained a voluntary transfer. In the absence of error or abuse by Mr. Garrison, the action of the employing establishment in offering appellant a job transfer and in making such an administrative decision is not compensable.¹⁰

Appellant's fear of losing his job as a result of the letters of warning he received is not compensable. Disabling emotional conditions resulting from an employee's fear of reduction-in-force and feeling of job insecurity do not constitute a personal injury in the performance of duty. Additionally, actual termination of employment is not covered under the Act.¹¹

Appellant contends that he was overworked in his job as a special delivery unit manager and that he was required to work overtime which caused him stress. The Board has held that overwork may be a compensable factor of employment.¹² The evidence in this case, however, does not establish that appellant was in fact overworked. The employing establishment has specifically denied that appellant's job required overtime or that his unit was understaffed such that appellant would have been unable to handle the volume of work required of him during regularly assigned duty hours. Appellant has not corroborated his allegations of overtime work with any written documentation, *i.e.*, time sheets or witness statements. His general allegations of overtime and being overworked are not factually supported in the record and, therefore, cannot constitute a compensable factor of employment.

Finally, although appellant continually references events that occurred in 1991, his current emotional claim must be proven based on work factors occurring after he returned to work following the acceptance of his prior claim. The Office has properly explained to appellant that his current occupational claim is a new claim for an emotional condition and is not a recurrence of disability pertaining to events of 1991.

Because appellant has failed to allege a compensable factor of employment, it is not necessary to review the medical evidence.¹³ The Board finds that the Office properly denied compensation.

¹⁰ Determinations by the employing establishment concerning promotions are administrative in nature and not a duty of the employee. *Merriett J. Kaufman*, 45 ECAB 696 (1994).

¹¹ *Sharon K. Watkins*, 45 ECAB 290 (1994).

¹² *Robert W. Wisenberger*, 47 ECAB 406 (1996).

¹³ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated October 16, 2001 is hereby affirmed.

Dated, Washington, DC
July 22, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member