U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY A. HALL and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

Docket No. 00-1485; Submitted on the Record;
Issued May 29, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an emotional condition causally related to his federal employment; and (2) whether appellant was disabled for work due to his August 18, 1992 employment injury.

This case has previously been before the Board. In a May 12, 1997 decision, the Board found that appellant sustained an idiopathic fall while at work on August 18, 1992. Further development was required, however, on the issue of whether appellant struck his head against an object connected with his employment during the fall. The Board also directed the Office of Workers' Compensation Programs to further develop the issue of whether appellant sustained an emotional condition casually related to his federal employment. The factual background of the case are set forth in the Board's May 12, 1997 decision is incorporated by reference.[1]

With regard to his emotional condition claim, appellant alleged harassment by his supervisor regarding the amount of work he was required to perform while on light duty and was required to work beyond his physical limitations. By letter dated July 8, 1997, the Office requested the employing establishment to provide information as to these issues. In a July 13, 1997 response, Maxine Robinson, the supervisor of distribution operations, noted that it was difficult to remember any of the incidents concerning appellant, but that he did not seem to care to come to work or perform limited-duty work. Ms. Robinson denied any harassment of appellant while she worked with her and noted that she may have spoken with appellant about bringing reading materials on to the workroom floor. She indicated that appellant's managers were carefully trying to observe his physician's limited-duty work restrictions, noting that he looked physically fit and that other employees may have expressed doubts concerning his

[1] Docket No. 95-1277 (issued May 12, 1997). In Docket No. 97-1106 the Board issued a December 29, 1998 decision which found that appellant's claim for a schedule award was not in posture for decision based on a March 16, 1991 injury to his right wrist.

inability to perform his regular duties. Ms. Robinson had no recollection of any specific comments made about appellant, as five years had passed.

The employing establishment injury compensation specialist advised the Office that she contacted Jim Wittig, who was appellant's supervisor at the time of the incidents alleged and that he did not recall any of the allegations made. The employing establishment also forwarded a job description of appellant's limited-duty work and materials related to appellant's incarceration for assault with a dangerous weapon. Materials submitted noted that when appellant passed out on August 18, 1992, his head struck a knocker, a piece of equipment used to move mail.

In an October 24, 1997 decision, the Office accepted that appellant sustained an employment injury on August 18, 1992 resulting in contusions to his back, face and neck. The Office found, however, that there was insufficient evidence to support that appellant was harassed by his supervisors as alleged or that he was not provided with light duty within his prescribed medical restrictions. The Office concluded that appellant did not sustain an emotional condition causally related to factors of his federal employment.

On October 30, 1997 appellant requested a hearing before an Office hearing representative. By decision dated January 25, 1999, an Office hearing representative remanded the case to the Office to consolidate the record with other case records for wrist and arm conditions and a determination as to whether appellant was required to work outside of his physical limitations.

In a March 12, 1999 decision, the Office noted that a review of appellant's file revealed prior traumatic injury claims for left and right wrist injuries, with the original right wrist strain sustained on March 16, 1991 following which he returned to limited duty. The Office found that the medical evidence of record was not sufficient to establish that appellant was disabled following the August 18, 1992 injury for the period to October 2, 1992 due to the accepted contusions. The Office also found that appellant had not submitted evidence sufficient to support his allegations that he was harassed by his supervisors at work or required to work outside of his physical restrictions.

On March 15, 1999 appellant, through his attorney, requested an oral hearing before an Office hearing representative that was held on September 24, 1999.

In a December 16, 1999 decision, an Office hearing representative affirmed the March 12, 1999 decision. The hearing representative noted that the medical evidence submitted following the August 18, 1992 injury addressed appellant's inability to work due to elevated blood pressure and a subsequent diagnosis of a herniated disc at L4-5 and L5-S1. She noted, however, that the only accepted conditions resulting from the August 18, 1992 fall were contusions of the head and lumbar spine, concluding that the medical evidence did not attribute appellant's disability to the accepted conditions. As to appellant's emotional condition, the hearing representative found that appellant had not submitted sufficient evidence to establish his allegations that he was forced to work outside of his physical restrictions or to establish harassment by his supervisors. She also found that appellant's allegation that, the employing establishment did not provide work during the week preceding April 1, 1993, was not a compensable factor of employment and that his fear of future injury was not compensable.

The Board finds that appellant has not established that he was disabled for work as a result of the August 18, 1992 employment injury.

The medical evidence of record does not establish that, following injury on August 18, 1992, appellant sustained disability due to the contusions accepted as resulting from his fall at work. A disability certificate from the Underwood-Memorial Hospital emergency room noted that appellant was disabled from August 18 to 20, 1992 due to an increase in his blood pressure. On September 30, 1992 Dr. Cesar Arias issued a disability certificate which noted that appellant was under his care and would be able to return to work as of October 2, 1992. He remarked that appellant was "out of work since August 18, 1992 due to medical problems." In an October 2, 1992 narrative report, Dr. Arias stated that he examined appellant on September 22, 1992, a month following his treatment at the Underwood Memorial emergency room. He noted that appellant's blood pressure was elevated but appellant was reported as alert and oriented with echocardiogram and skull x-rays within normal limits. Dr. Arias noted that he was unable to give detailed information about appellant's status at the time of treatment and relied upon the hospital records for review. He noted that appellant continued to be treated for hypertension, noting that it "was aggravated by the stress brought up by the accident but has nothing to do with it as the causative factor." The Board notes that the reports of Dr. Arias are not well rationalized with regard to explaining the basis for appellant's disability for work following the August 18, 1992 injury. The report does not attribute any period of disability to the accepted contusions sustained on that date.

In a November 5, 1992 report, Dr. John R. Rushton reported that he saw appellant on September 23, 1992 for a neuropsychiatric consultation. He related appellant's allegations pertaining to stress on the job, headaches and increased blood pressure and noted prior back injuries while appellant was serving in the Navy and a December, 1990 automobile accident in which he sustained a fractured sternum and lacerations. Dr. Rushton diagnosed a spinal sprain and strain, herniated disc of the low back and an anxiety disorder. He stated that the diagnoses were a "result of the injuries sustained in accident August 18, 1992." The Board notes that Dr. Rushton did not provide any explanation for his stated conclusion relating his diagnosed conditions to appellant's August 18, 1992 employment injury nor did he explain how the various diagnoses caused or contributed to appellant's disability for work after that date. This medical evidence does not establish that appellant's accepted contusions caused or contributed to his disability for the period claimed. In a December 22, 1992 report, Dr. Rushton noted that he continued to see appellant for psychotherapy. No additional discussion on disability was provided.

Dr. William Ellien, a psychiatrist, reported on April 16, 1993 that he read a statement completed by appellant on April 12, 1993 concerning the conditions of his employment during the period March 16, 1991 through April 1, 1993. He hospitalized appellant for treatment for the period April 1 to 16, 1993. Dr. Ellien discussed appellant's work injuries and noted a lumbar disc abnormality, which appellant attributed as work related. He stated that appellant was hospitalized for symptoms of a post-traumatic stress disorder and participation in a dual diagnosis treatment program due to a history of alcohol and cocaine dependence. While addressing appellant's symptoms of anxiety for the period prior to August 18, 1992, Dr. Ellien did not address how appellant's disability, after that date, was due to or contributed to by the accepted contusion conditions.

Every employment injury does not necessarily cause disability for work. Whether a particular injury causes an employee disability for employment is a medical issue that must be resolved by competent medical evidence.[2] The medical reports of record are insufficient to establish appellant's disability for work after August 18, 1992 was due to residuals of the accepted fall and contusions. Appellant has failed to meet his burden of proof on this issue.

The Board further finds that appellant has not established that he sustained an emotional condition causally related 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 coverage of workers' compensation. When disability results from an emotional reaction to the employee's regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act. The disability is not covered, however, when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feelings of job insecurity or the desire for a different job, promotion or transfer do not constitute personal injury sustained in the performance of duty.[3]

As a general rule, an employee's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.[4] Administrative and personnel decisions are generally related to the employment but they are functions of the employer and not duties of the employee.[5] The Board has held, however, that administrative and personnel matters will be considered as an employment factor where the evidence of record discloses error or abuse on the part of the employing establishment.[6] In determining whether the employing establishment has erred or acted abusively, the Board will examine the record to determine whether agency personnel acted reasonably.[7] The assignment of work is an administrative matter of the employing establishment and not a duty of the employee. Absent evidence to support a finding of error or abuse by the employing establishment, a work assignment is not a compensable factor.[8]

Appellant alleged that he sustained an emotional condition by being made to work outside of his physical restrictions when he returned to work following his employment injuries and that he was harassed about his light-duty-assignment. The evidence of record does not

[2] *See Donald Johnson*, 44 ECAB 540 (1993).

[3] *See Helen P. Allen*, 47 ECAB 141 (1995); *Lillian Cutler*, 28 ECAB 125 (1976).

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

[5] *See Alberta Kinloch-Wright*, 48 ECAB 459 (1997).

[6] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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

[8] *See Janet D. Yates*, 49 ECAB 240 (1997).

support appellant's contention as factually established or that the employing establishment committed error or abuse in the work assignments that he was given. Actions of an employee's supervisor or coworkers that the employee characterizes as discrimination or harassment may constitute a compensable factor of employment provided there is evidence that such actions did, in fact, occur.[9] To meet his burden of proof, a claimant must establish a factual basis for the claim by supporting his allegations with probative and reliable evidence.[10] The record in the present case provides copies of appellant's light-duty assignments, which conformed to his physical limitations. Further, appellant's former supervisors disputed his allegations of harassment and verbal abuse. The evidence is not sufficient to establish appellant was required to perform work that did not conform to his physical limitations or that he was harassed by his supervisors pertaining to his limited-duty job assignments.[11]

The December 16, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 29, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[9] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[10] *See Lillie M. Hood*, 48 ECAB 157 (1996).

[11] *Compare Ronald Martinez*, 49 ECAB 326 (1998).