

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of MAURO S. MARQUEZ and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 01-1317; Submitted on the Record;  
Issued May 3, 2002*

---

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained a stress-related condition in the performance of duty.

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained a stress-related condition in 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 or stress-related 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> This burden includes the submission of a detailed

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

In cases involving emotional or stress-related conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, 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.<sup>5</sup> 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.<sup>6</sup>

In February 2000, appellant, then a 55-year-old mail carrier, filed a claim alleging that he sustained hypertension, chest and back pains, post-traumatic stress syndrome and depression as a result of a number of employment incidents and conditions.<sup>7</sup> By decision dated June 13, 2000, the Office denied appellant's condition claim on the grounds that he did not submit sufficient evidence to establish that he sustained an employment-related emotional or stress condition. The Office accepted several employment factors but determined that the medical evidence did not show that appellant sustained an emotional or stress-related condition due to these factors. By decision dated and finalized March 14, 2001, an Office hearing representative affirmed the Office's March 14, 2001 decision as modified to reflect that appellant's claim was denied 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.

Appellant alleged that the employing establishment improperly disciplined him and unreasonably monitored his work activities. He indicated that in August 1998 he received an unfair performance evaluation.<sup>8</sup> Appellant claimed that the employing establishment mishandled his work assignments by giving him too much mail to carry. Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluations, improperly assigned work duties and unreasonably monitored his activities at work, the Board finds that these allegations relate to administrative or personnel

---

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> Appellant stopped work on October 19, 1999 and indicated that he first became aware of his condition on April 10, 1999.

<sup>8</sup> He also asserted that he received an unwarranted letter of warning in October 1984 for failure to deliver the mail.

matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> Appellant did not submit any evidence to show that the employing establishment committed error or abuse with respect to the above-described administrative matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. He claimed that supervisors committed harassment and discrimination by subjecting him to numerous route inspections and by placing unreasonable work conditions on him. 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>15</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant alleged that the management of the employing establishment was disorganized and indicated that he had 10 different supervisors over the course of 16 years. However, the

---

<sup>9</sup> 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).

<sup>10</sup> *Id.*

<sup>11</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>12</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>13</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>14</sup> 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).

<sup>15</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>16</sup>

Appellant claimed that he developed stress due to working overtime over extended periods and by attempting to meet deadlines for delivering mail.<sup>17</sup> He indicated that he worked at least 10 hours a day for four or five days a week. The Board has held that stress-related reactions to situations in which an employee is trying to meet his position requirements are compensable.<sup>18</sup> The record contains evidence, which supports appellant's assertion that he worked overtime over extended periods. Therefore, appellant has established an employment factor in this regard.<sup>19</sup>

In the present case, appellant has identified a compensable factor of employment with respect to working overtime. As appellant has implicated a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.<sup>20</sup> After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

---

<sup>16</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>17</sup> Appellant asserted that working overtime contributed to an April 12, 1999 incident when he experienced chest pains at work.

<sup>18</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>19</sup> Appellant alleged that he sustained stress due to an incident at work when a coworker's vehicle was struck by another vehicle and the coworker, as well as the occupants of the other vehicle, were seriously injured. Appellant gave vague accounts of the incident and variously described it as occurring in 1992, 1993 and 1995. He indicated that he developed his stress-related condition in 1999 and he did not adequately explain how this alleged incident related to the present claim. Therefore, appellant has not established a compensable employment factor with respect to this matter.

<sup>20</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

The March 14, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
May 3, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member