

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSIE L.W. BOWDEN and U.S. POSTAL SERVICE,
POST OFFICE, Palo Alto, CA

*Docket No. 02-494; Submitted on the Record;
Issued October 1, 2002*

DECISION and ORDER

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

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

Appellant, then a 42-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging that on September 13, 1999 he realized his mental stress was due to harassment, mental abuse, slander and his unjust termination.

By letter dated November 27, 1998, the employing establishment issued appellant a suspension for seven days for refusing to allow his supervisor to take him to a hospital of his choice after notifying his supervisor that he was sick from bathroom fumes.

On December 8, 1998 the employing establishment issued a proposed notice of removal from the employing establishment for threatening his supervisor. Appellant's removal was finalized by letter dated January 6, 1999 and made effective January 11, 1999.

In a statement dated December 14, 1999, appellant attributed his stress to the termination of his employment, not being paid for six months and the failure to pay him for the six months after he had been reinstated and harassment by Mr. David Gavino, appellant's supervisor. He also alleged that due to the wrongful termination he lost his house, automobile and credit which contributed to his stress. In addition, he alleged he felt harassed on September 13, 1999 when he was ordered to see an employing establishment physician prior to seeing his attending physician. Appellant alleged that Mr. Gavino attempted to get him fired from his job, verbally threatened him for a year and lied about him. Lastly, appellant claims that his enlarged prostate weakened immune system and nervous condition were all due to the harassment he was subjected to by Mr. Gavino.

Appellant submitted treatment notes from Fremont Hospital for the period October 5 through October 19, 1999.

On January 14, 2000 the employing establishment settled appellant's grievance regarding his November 27, 1998 suspension. The employing establishment reduced the suspension notice to a warning letter and was awarded back pay for the time lost.

In a letter dated April 21, 2000, Mr. Eddie N. Masangcay, Manager/Customer Service, denied appellant's allegations. Mr. Masangcay denied appellant's contention that he had been harassed or mentally abused by any manager. He noted that appellant had been suspended for seven days on November 27, 1998 for failing to follow instructions which had been grieved and resulted in a settlement to pay appellant back for the suspension. Appellant was removed effective January 6, 1999 for threatening his supervisor, Mr. Gavino, with bodily harm when he received the November 27, 1998 suspension. Lastly, he noted that appellant's duties, as a parcel post driver required him to spend most of his time on the street and "detached from constant and immediate supervision."

By letter dated May 8, 2000, the employing establishment settled appellant's termination grievance by reassigning him to work at a different location. It was found that appellant's allegations of verbal threats were meritless.

By decision dated May 19, 2000, the Office of Workers' Compensation Programs denied appellant's claim.

Appellant requested an oral hearing, which was held on September 20, 2000.

By decision dated January 5, 2001 and finalized on January 8, 2001, the hearing representative affirmed the denial of appellant's claim on the basis that the evidence failed to establish any compensable factor of employment.

In a letter dated June 26, 2001, appellant requested reconsideration and submitted a June 20, 2001 decision by the Merit Protection Systems Board, in support of his request. In the decision, the administrative law judge found appellant failed to prove that he had been subjected to discrimination and, thus, denied his request for compensatory damages. The administrative law judge also dismissed the appeal as moot due to appellant's failure to support his allegation of discrimination and the agency's rescission of his removal.

By merit decision dated July 19, 2001, the Office denied appellant's request for modification.

The Board finds that appellant has not sustained an emotional 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 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.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

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.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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.⁵ 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.⁶

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated May 19, 2000, January 8 and July 19, 2001, 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.

In his initial claim, appellant alleged an injury as a result of his wrongful termination on January 11, 1999. 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.⁷ 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

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).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

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

⁶ *Id.*

⁷ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

the employing establishment.⁸ The record contains evidence that appellant was removed effective January 11, 1999 for threatening a supervisor. He filed a grievance over his removal, which the employing establishment settled. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.⁹ The record contains no evidence that the employing establishment acted abusively or erroneously when it removed him. Contrary to appellant's contention, the decision by the Merit Protection Systems administrative law judge does not support any error or abuse by the employing establishment. Rather, it supports that the employing establishment acted correctly in issuing its removal letter. The Board finds no evidence establishing error or abuse in a disciplinary action in this case.

Appellant alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. 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 could constitute employment factors.¹⁰ 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.¹¹ In a letter dated December 14, 1999, appellant alleged that his supervisor made verbal threats over the years, lied about him and threatened to get him fired. However, Mr. Masangcay denied that appellant was subjected to harassment or discrimination by any manager. As the employing establishment denied that appellant was subjected to harassment or discrimination and he has not submitted sufficient evidence, such as witness statements to establish that he was harassed or discriminated against by his supervisors, he has not substantiated a compensable factor under the Act.¹²

For the foregoing reasons, appellant has not established any compensable factors under the Act and, therefore, his burden has not been proven in establishing that he sustained an emotional condition while in the performance of duty.¹³

⁸ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ *Michael Thomas Plante*, *supra* note 8.

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 8.

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² 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).

¹³ Because appellant has not established any compensable factors, the Board need not consider the medical evidence of record; see *Garry M. Carlo*, 47 ECAB 299 (1996); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The July 19, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 1, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member