

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY A. PACHECO and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

*Docket No. 02-1464; Submitted on the Record;
Issued October 4, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

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

On November 25, 2000 appellant, a 40-year-old customer services manager, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that as a result of his federal employment he suffered from anxiety and hypertension. He stated that he first became aware of his condition on or about June 18, 2000. Additionally, appellant identified November 21, 2000 as the date he realized his condition was caused or aggravated by his employment. Appellant alleged that there had been five investigations of him since June 2000, none of which had merit. He further noted that he had been placed on administrative leave.

By decision dated December 5, 2000, the Office of Workers' Compensation Programs denied appellant's claim.¹

By letter dated August 27, 2001, appellant requested reconsideration. In his request, appellant enumerated several instances of management's treatment of him which led to his medical condition. In October 2000, John Petruzzelli, appellant's supervisor, investigated him with respect to mail conditions but relied on incorrect documentation that, in fact, concerned mail volume. He was nonetheless placed on administrative leave with pay, but notes that 10 months later "there is still not enough evidence to support his actions." Appellant also alleged that there was an allegation of sexual harassment against him, but that he had not been notified nor had an investigation been conducted on that issue. He alleged that Mr. Petruzzelli asserted that he had conducted an interview with appellant in June 2000 regarding attendance issues but that no such interview occurred and that a postal inspector's investigation failed to substantiate Mr. Petruzzelli's allegation. Appellant stated that

¹ On July 22, 2001 the Branch of Hearings and Review Office denied appellant's request for an oral hearing on the grounds that it was untimely filed.

Mr. Petruzzelli failed in an attempt to coerce a female employee into providing testimony against him that he sexually harassed her, that he was interviewed by Mr. Petruzzelli on September 15, 2000 based on a June 2000 inspection, but that the interview focused on personal matters and was conducted in an abusive manner, and that, on September 19, 2000, Mr. Willkerson, postmaster at the time, said in a telephone conference call that Mr. Petruzzelli seemed to have it in for appellant, at which time he was advised by another manager that his conversation “could be heard by everyone.” He also noted that, on October 4, 2000, Mr. Petruzzelli attempted to humiliate appellant in front of his fellow managers by accusing him of “abusing rural route hours,” an allegation that turned out to be false, and that on October 6, 2000 Mr. Petruzzelli conducted an investigation of appellant asking questions concerning some events that occurred nine months prior. Appellant also alleged that maintenance workers broke open his filing cabinet to look for “something he could use against me,” and that postal inspectors checked his computer hard drive to see if they could find anything against him. He also alleged that the employing establishment conducted a sexual harassment investigation into one of appellant’s employees that appellant had already finalized, and that management was motivated by an opportunity “to destroy my character and make me look incompetent as a manager.” Appellant also alleged that management sought to interview him in March and April 2001, advised him he could have an attorney present, then advised him he could not. Appellant attributed management’s motivation to a desire to “mess with my mind.”

In a decision dated February 19, 2002, the Office denied modification of appellant’s request for reconsideration.

The Board has reviewed the record and finds that appellant has not established an emotional condition in the performance of duty.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 factors of his federal employment.³ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁴

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 the coverage of the Act. Where the disability results from an employee’s emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability

² Since the Office had previously denied appellant’s claim as a performance of duty issue, the facts of the investigations and appellant’s mental illnesses are accepted.

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

⁴ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.⁵

The initial question presented is whether appellant has alleged and substantiated compensable factors of employment as contributing to his emotional condition. With respect to appellant's allegations that he had been targeted for multiple investigations by management regarding sexual harassment, maintaining incorrect records and attendance, the Board has held that investigations into these kinds of issues are administrative matters, and absent sufficient showing of error or abuse, do not constitute compensable employment factors.⁶ Appellant presented no factual evidence to support his allegation of error or abuse,⁷ and the employing establishment defended its investigations based on allegations made against appellant. For example, appellant alleged that he had never been informed that he was subject to a sexual harassment inquiry. Although the record is unclear with respect to whether management notified him that he was under an investigation for sexual harassment, the employing establishment noted that an employee had complained against appellant in this regard, that arrangements were made for her testimony outside the work area, and that appellant was aware of this development. With regard to appellant's placement on administrative leave during the pendency of the employing establishment's investigation of his alleged improper record keeping, the evidence of record does not reflect error or abuse by the employing establishment.⁸ With respect to the September 19, 2000, telephone conference call which appellant alleged that Mr. Willkerson, postmaster at the time, said that Mr. Petruzzelli seemed to have it in for appellant, the evidence fails to reveal that Mr. Petruzzelli made any comment during the conversation. For harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.⁹ Mere perceptions alone of harassment are not compensable under the Act.¹⁰ Appellant submitted a witness statement that a manager stated that Mr. Petruzzelli had it in for appellant, but this evidence does not indicate that Mr. Petruzzelli responded in any way to the assertion and thus fails to establish that Mr. Petruzzelli harassed appellant on this date. Further, appellant's allegations that Mr. Petruzzelli attempted to humiliate him at managers' meetings each Wednesday and specifically on October 4, 2000, management denied these allegations and appellant failed to provide probative evidence to substantiate that such conduct occurred.¹¹

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Parley A. Clement*, 48 ECAB 302 (1997).

⁷ The employing establishment noted that it had previously included an incorrect date regarding one of the interview dates with appellant.

⁸ *Garry M. Carlo*, 47 ECAB 299 (1996).

⁹ *Frederick D. Richardson*, 45 ECAB 454 (1994).

¹⁰ *See Mary L. Brooks*, 46 ECAB 266 (1994).

¹¹ *Barbara E. Hamm*, 45 ECAB 843 (1994) (To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.)

The Board has 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, and that it will examine whether the employing establishment erred or acted abusively.¹² The mere fact that investigations were conducted and that appellant was placed on administrative leave does not establish error or abuse.¹³ Appellant has provided insufficient evidence to support his allegations that the employing establishment erred or acted abusively in any of the named administrative actions and has not established a compensable employment factor under the Act with respect to these administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty. Consequently, as appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹⁴

The February 19, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 4, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹³ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹⁴ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).