

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELISEO M. IRASUSTA and U.S. POSTAL SERVICE,
POST OFFICE, Alameda, CA

*Docket No. 03-204; Submitted on the Record;
Issued April 16, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On August 10, 2001 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging that he sustained a stress-related condition when he was harassed by his supervisors. Appellant stopped work on August 2, 2001.

Appellant submitted a report from Dr. James P. Howard, a specialist in psychiatry, dated March 24, 2000; reports from Dr. Anthea Fursland, a psychologist, dated August 2 and 22, 2001; a report from Dr. Stephen Heckman, a specialist in psychiatry, dated August 10, 2001; and a report from Dr. Diane Enos, a psychologist, dated August 20, 2001. Dr. Howard indicated that appellant was experiencing a level of work stress which was detrimental to his ability to function. Dr. Fursland indicated that appellant was treated on August 2, 2001 and was ill and unable to attend work until August 13, 2001. Her August 22, 2001 report noted that appellant reported exhaustion, weakness and stress as a result of being harassed at his workplace. Dr. Fursland diagnosed occupational problems, anxiety and dysthymia and that appellant was to be off work until August 13, 2001. Dr. Heckman indicated a history of appellant's emotional condition noting that he was in an automobile accident while at work and developed a driving phobia. Appellant stated that thereafter he requested and received a position casing mail. He also reported to Dr. Heckman that his supervisor pressured him to return to delivering mail and that he was being threatened by the postmaster for taking sick leave. Dr. Enos diagnosed appellant with an occupational problem and noted that he received a letter of warning regarding his use of sick leave and was harassed by his supervisors.

Appellant submitted a statement which raised the following allegations: (1) his supervisor harassed him by insisting that he deliver mail even though he was on permanent restricted duty from delivering mail as a result of being involved in multiple motor vehicular accidents and experiencing threats by customers; (2) appellant's supervisor wrongfully restricted his sick leave status in March 2001 and charged him annual leave for time taken for doctors'

appointments; and (3) his supervisor wrongfully issued a letter of warning dated July 6, 2001 for irregular attendance.

Appellant submitted reports from Dr. Heckman dated September 21 and December 14, 2001 who diagnosed an adjustment disorder with mixed anxiety and depressed mood. Dr. Heckman indicated that appellant was experiencing psychiatric symptoms which were caused by factors of his employment. He noted that his impression was that appellant's work pressure appeared to be an act of bad faith on the part of the management. Dr. Heckman indicated that the factors of employment of nonaccommodation of appellant and potential abuses of authority caused tremendous stress. He found that appellant was temporarily totally disabled from work due to his psychiatric illness. Dr. Heckman's report of December 14, 2001 indicated that he treated appellant in November 2001 and he presented with continued symptoms of severe depression, anxiety and agitation. He indicated that appellant could not return to work before February 2002.

The employing establishment submitted a statement from Warren G. Spencer, appellant's supervisor, dated January 31, 2002, who indicated that appellant was placed on restricted sick leave which meant that he was required to provide acceptable documentation for any unscheduled absences. He noted that appellant's use of annual leave was voluntary and that he used annual leave because all of his sick leave was exhausted. Mr. Spencer noted that any doctor's appointments canceled by appellant were done so by his own choice. He indicated that appellant was issued a letter of warning for irregular attendance, which was supported by his leave record. Mr. Spencer indicated that management has worked hard to accommodate appellant and denied allegations of harassment.

In a decision dated March 6, 2002, the Office denied appellant's claim for compensation on the basis that he failed to establish that the claimed injury occurred in the performance of duty.

By letter dated March 18, 2002, appellant requested a review of the written record by an Office hearing representative. He submitted several statements and copies of awards granted to him.

By decision dated July 24, 2002, an Office hearing representative affirmed the Office's decision dated March 6, 2002 on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

In a letter dated August 12, 2002, appellant requested reconsideration of the July 24, 2002 decision and submitted reports from Dr. Heckman dated July 14 and September 10, 2002. Dr. Heckman indicated a history of his condition and noted that he suffered a setback in March 2002, when he experienced a psychotic episode. Appellant was diagnosed with major depressive episode with recurrent psychotic features. Dr. Heckman indicated that appellant had reached permanent and stationary status and was permanently disabled. He based this opinion on the history presented by appellant of ongoing harassment. Dr. Heckman diagnosed appellant with profound and protracted depression with severe perceptual distortion and low self-esteem.

In a decision dated October 9, 2002, the Office denied modification of the prior decisions.

The Board finds that appellant did not sustain 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

Appellant alleged harassment on the part of his supervisor. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from

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.*

appellant's performance of his regular duties, these could constitute employment factors.⁷ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁸ Mr. Spencer indicated that he did not harass appellant regarding his sick leave. Appellant was placed on restricted sick leave, which meant that he would have to provide acceptable documentation for any unscheduled absences. Mr. Spencer noted that appellant's use of annual leave was voluntary and that he had used all of his sick leave. He noted that any doctor's appointments canceled by appellant were done so by his own choice. Mr. Spencer acknowledged appellant was issued a letter of warning for irregular attendance, which was supported by his leave record.⁹ The Board finds there is insufficient evidence of record to support appellant's contention that his supervisor threatened to return him to delivering mail. Mr. Spencer indicated that management had worked hard to accommodate appellant and his medical restrictions in his current position. General allegations of harassment are not sufficient¹⁰ and appellant has not submitted sufficient evidence to establish that he was harassed by his supervisor.¹¹ Appellant alleged that his supervisor made statements and engaged in actions, which he believed constituted harassment, but he provided insufficient evidence, such as witness statements, to establish that the statements alleged were made or that the actions alleged occurred.¹² The Board notes that vague allegations of a supervisor threatening appellant are insufficient to establish his claim that he was harassed. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.¹³ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ See *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001) (while the Board has recognized the compensability of threats in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability).

¹⁰ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹¹ 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).

¹² See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

¹³ See *Marguerite J. Toland*, 52 ECAB ____ (Docket No. 99-1989, issued March 9, 2001). (An employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion, as a rule, is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.)

Appellant's other allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹⁴ the Board held that 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. The Board noted, however, 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. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant, which fall into this category of administrative or personnel actions include: (1) Mr. Spencer restricted his sick leave status in March 2001 and charged him annual leave for time taken for doctors' appointments;¹⁵ and Mr. Spencer issued a letter of warning dated July 6, 2001 for irregular attendance.¹⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁷ Although appellant has made allegations that the employing establishment erred and acted abusively, appellant has not provided sufficient evidence to support his contentions. A review of the evidence indicates that appellant has not shown that the employing establishment's actions were unreasonable. He provided insufficient evidence to establish that his supervisor's actions were unreasonable.¹⁸ Thus, appellant has not established a compensable employment factor under the Act in this respect.¹⁹ He has not established administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

¹⁴ See *Thomas D. McEuen*, *supra* note 2.

¹⁵ See *Judy Kahn*, 53 ECAB __ (Docket No. 00-457, issued February 1, 2002). (Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.)

¹⁶ *Id.*

¹⁷ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁸ See *Larry J. Thomas*, 44 ECAB 291, 300 (1992).

¹⁹ See *John Polito*, 50 ECAB 347 (1999).

The decisions of the Office of Workers' Compensation Programs dated October 9, July 24 and March 6, 2002 are affirmed.

Dated, Washington, DC
April 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member