U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAY B. VINAS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Los Altos, CA

Docket No. 03-1617; Submitted on the Record;
Issued August 22, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

On July 31, 2001 appellant, a 43-year-old mail carrier, then performing a rehabilitation job offer as a lobby director, filed a notice of traumatic injury alleging that he developed an emotional condition due to actions of his supervisor. Appellant stated that he was overworked, stalked, harassed, intimidated and threatened resulting in stress. In a letter dated August 24, 2001, the Office of Workers' Compensation Programs requested additional factual and medical evidence from appellant. The Office noted that appellant's claim was properly characterized as an occupational disease and on September 15, 2001 appellant filed a notice of occupational disease. By decision dated October 9, 2001, the Office denied appellant's claim finding that he had failed to substantiate a compensable factor of employment.

Appellant requested an oral hearing on October 24, 2001 and testified on March 26, 2002. By decision dated June 6, 2002, the hearing representative denied appellant's claim finding that he failed to substantiate a compensable factor of employment.

The Board finds that appellant has failed to meet his burden of proof in establishing 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 the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an

employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[1]

In this case, appellant attributed his emotional condition to the actions of his supervisors, Barbara J. Spiker, supervisor of customer service, and Herbert J. Duvernay, manager of customer services. Appellant alleged that he developed an emotional condition diagnosed as occupational problems, adjustment disorder with mixed anxiety and depressed mood due to "derogatory remarks, harassment, stalking, intimidation and retaliation."

Appellant provided a detailed statement noting that he received disciplinary actions in the form of letters of warning on September 24, 1996, September 24, 1998 and July 20, 2001 and a seven-day no-time-off suspension on July 23, 2001. Appellant also asserted that Mr. Duvernay called him at home on April 8, 1999 regarding his fitness for duty and that Santosh Sharma, an employing establishment employee, required that appellant report to work on that date. He stated that Kathy Shearer, an official in charge, informed him that he must clock in every morning. Bill Comer[2] directed appellant to "mound the service window" and threatened appellant with suspension for disrespectful actions. He also instructed appellant not to speak to any clerks. Appellant disagreed with the disciplinary actions by Ms. Spiker and stated that she was rude when handling his suspension. He also stated that she embarrassed him by "yelling" at him to use the correct door. Appellant alleged that Ms. Spiker and Mr. Duvernay watched or stalked him while on breaks or using the restroom and while performing his duties. He submitted statements from coworkers, Bianca Berry and Sefe Numata, asserting that Ms. Spiker and Mr. Duvernay watched appellant and tried to monitor his break time.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly addressed leave, improperly assigned work duties and unreasonably monitored his activities at work, the Board finds that these allegations related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.[3] As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[4] In this case, appellant has submitted no evidence substantiating his allegations that the employing establishment acted unreasonably. Although appellant submitted statements from coworkers that his supervisor watched him, these statements do not establish that observing appellant while he performed his duties or timing his breaks was an unreasonable activity for his supervisors.

[1] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

[2] Mr. Comer is not otherwise identified in the record.

[3] 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gates*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[4] *Martha L. Watson*, 46 ECAB 407 (1995).

Appellant stated that the Dutch door was frequently locked. The employing establishment provided appellant with a key to this door on September 7, 2001. The Board finds that appellant's allegations of an emotional condition as the result of an occasionally locked door must be considered self-generated as it resulted from his frustration in not being permitted to work in a particular environment or to hold a particular position.[5]

Appellant alleged that Mr. Duvernay caused him to overwork resulting in his accepted upper extremity employment injury. Mr. Duvernay denied that appellant was overworked. The Board has held that overwork may be a compensable factor of employment.[6] The evidence in this case, however, is insufficient to establish that appellant was in fact overworked. Although appellant alleged that Mr. Duvernay required him to perform more work than was appropriate resulting in his upper extremity injury, Mr. Duvernay denied this allegation. Appellant has not submitted any evidence to corroborate his allegation of overwork and has therefore failed to substantiate this compensable factor of employment.

Ms. Spiker provided appellant with a list of his job responsibilities and break times by letter dated July 11, 2001. This document stated that appellant's first break occurred at 10:20 a.m. and that his lunch began at 12:30 p.m. and that his final break began at 15:50 p.m. Appellant testified at his oral hearing that this schedule violated his medical restrictions due to his accepted upper extremity injury. The Board has held that being required to work beyond one's physical limitations could constitute a compensable factor if such activity was substantiated by the record.[7] In support of his contention, appellant submitted a work restriction evaluation dated August 9, 1999 noting that appellant should have a 5-minute break every 20 minutes. However, an October 4, 1999 work restriction evaluation did not provide for any specific breaks. As the October 4, 1999 report is the more recent evaluation, there is no medical evidence in the record supporting the requirement that appellant have a prescribed number of breaks at the time Ms. Spiker provided him with his work schedule on July 11, 2001. In a statement dated April 20, 2002, Ms. Spiker stated that appellant subsequently submitted additional medical evidence providing for frequent breaks as needed and that the employing establishment had made every effort to accommodate this request.[8] Appellant has not submitted any additional evidence establishing that the employing establishment did not comply with his work restrictions as they were received and therefore he has not established the compensable factor that he was required to work beyond his physical restrictions based on the medical evidence in this record.

Appellant also attributed his emotional condition to actions and statements by Jose Sanchez, a coworker, who allegedly suggested on May 8, 2001 that appellant return to the Philippines, so that he could be killed by a politician or the strikers. He asserted that

[5] *Tanya Gaines*, 44 ECAB 923, 934-35 (1993).

[6] *Robert W. Wisenberger*, 47 ECAB 406, 408 (1996).

[7] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[8] Appellant submitted a duty status report dated August 27, 2001 from a physician whose signature is illegible, suggesting that appellant should be allowed to take up to 10-minute breaks up to 6 times a day in addition to his regularly scheduled breaks.

Mr. Sanchez followed him on July 25, 2001. Appellant stated that Mr. Sanchez stated on August 28, 2001 that appellant might get a hernia as appellant picked up hold mail and that on August 30, 2001 Mr. Sanchez pretended not to see appellant and almost hit appellant with parcels he was throwing.

Ms. Spiker allegedly made remarks about paying appellant to do nothing on May 20, 1999. Appellant asserted that on June 5, 2001 Ms. Spiker and Mr. Duvernay were "talking about all the injured people to get tough on them and how to get rid of them." He further stated that Ms. Spiker accused him of reading a customer's magazine when assigned to work postage due on June 24, 1999 and that she instructed him not to speak to other employees, but to stay in the lobby and do his work.

According to appellant, his emotional condition was due in part to a coworker he named only as Vern, in maintenance, who made allegedly sarcastic remarks that he would like to have appellant's job on March 28, 2000, and as reported by a witness, Floyd Phillips, that appellant was a "pumpkin head" who was not doing his job and needed to be dismissed.

Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act. Appellant has not substantiated that the remarks made by Ms. Spiker, Mr. Duvernay and Mr. Sanchez actually occurred. Furthermore, the Board finds that Vern's description of appellant as a "pumpkin head" who was not doing his job and needed to be dismissed is an isolated comment and that appellant has not shown how such a comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[9]

Appellant also submitted complaints with the Equal Employment Opportunity Commission repeating the above allegations as well as settlement agreements admitting to no wrongdoing by either party.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers through the above described actions contributed to his claimed stress-related condition. 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[10] In this 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 discrimination against by his supervisors or coworkers. Appellant alleged that supervisors and coworkers made statements and engaged in actions which he believed

[9] *See, e.g., Alfred Arts*, 45 ECAB 530 543-33 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction).

[10] *Alice M. Washington*, 46 ECAB 382 (1994).

constituted harassment and discrimination, but he provided no corroborating evidence, such as specific witnesses' statements, to establish that the statements were actually made or that the actions actually occurred in the manner alleged. Although a witness reported that Vern called appellant a "pumpkin head" and witnesses noted that his supervisors observed appellant while at work and on break, the Board again notes these Vern's isolated statement does not rise to the level of harassment, nor do the substantiated actions of his supervisors. Thus appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[11]

The June 6, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).