

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEROME WATSON and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 03-1902; Submitted on the Record;
Issued December 2, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
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 November 29, 2000 appellant, a 51-year-old mail handler, filed an occupational disease claim alleging that in August 1999 he realized his stress was employment related due to harassment by management personnel.

In an undated statement, appellant detailed various events he believed constituted harassment. He noted that Ricky McCloud, an acting manager, "made serious references" about his mother several years back. Appellant alleged that Mark Garrison, a coworker, launched a verbal attack on him by calling him "a bitch and whore" and following him into the men's room. Appellant requested that management call security, but nothing was done. He alleged that J. Miller, a supervisor, deducted \$500.00 from his wages and gave no explanation as to why the system did not show 16 hours of overtime he had worked. Appellant alleged that his lunch was stolen by Vita, a coworker. He stated he was "called into the conference room because a new mail handler" complained when he did not speak to her. Appellant was issued a letter of warning regarding his use of sick leave, when he has not used any sick leave for 12 years. He alleged that management arranged for a bid job to be "opened for mail handler Monette so he could get higher pay" than him. On November 16, 1999 several flyers were placed on bulletin boards in the employing establishment by Errol Williams, a union president, referring to appellant as a scab which caused him humiliation and stress. Bobby Joseph, a coworker, used vulgar language and yelled at him due to an all-purpose container being moved. On June 19, 1999 Mr. Tapia, a supervisor, instructed appellant to perform an unsafe act by requesting he "push a full truck of BBM [bulk business mail]," when there were two tow motors available. Appellant was illegally taken off the clock by Mr. Tapia, who "had just returned from getting hot fried chicken and french fries from her good buddy Wittington who was on overtime" and "cooking food in crock pots." In November 2000, MDO Watson made comments about the death of his parents. On May 10, 2002 he was twice subjected to a verbal attack by Danny McCraney, a mail handler, with no action being taken by MDO Watson or Supervisor G. Young.

Appellant was paged to do work that was not his responsibility. Supervisor Lori Jerden attempted to provoke appellant by constantly asking him to perform two jobs at the same time with no extra pay. His holiday pay was deducted by T&A Supervisor B. Jones as she did not find his request to take the holiday off to be suitable. Appellant also alleged that Supervisor Jerden failed three times to properly submit vouchers of pay which resulted in a shortage of pay for appellant. He was denied a tow motor license by MDO Park and MDO Watson for no reason whereas two employees with less seniority were given the training. Monette has been allowed by management to continuously operate the tow motor unsafely without care for the employee. Appellant is constantly required to do overtime by Supervisor Jerden so her friends have the leave to attend bowling tournaments and football games.

Appellant submitted affidavits from Alesha M. Merrit. In a June 16, 2000 affidavit, Ms. Merrit described two incidents between appellant and Mr. McCraney. One involved appellant's placement of a U-cart and the other involved Mr. McCraney yelling at appellant to get his big brother.

On December 15, 2000 Ms. Jerden denied harassing appellant. She also disputed the truth of some of appellant's allegations. Ms. Jerden stated that she made a legitimate request of appellant when she requested he remove pallets from the elevator. She also noted that appellant did not submit any medical reports to verify his stress condition. Regarding the allegations appellant made regarding Ms. Jerden, he stated that she had no idea what he was talking about and that they were not valid. She noted appellant has had disciplinary action due to his behavior and that she has sent him for fitness for duty examinations, but he has refused to go. Appellant's allegation that Mr. Tapia took him off the clock illegally was untrue as he was absent without leave at this time. Ms. Jerden denied appellant's allegation that she constantly violated the contract and that he has a problem with her telling him to do something.

On January 24, 2001 the Office of Workers' Compensation Programs informed appellant that the evidence of record was insufficient to support his claim and advised him regarding the factual and medical evidence required.

On March 8, 2001 the Office issued a decision denying appellant's claim. The Office found that appellant failed to establish any compensable factors of employment.

Appellant disagreed with the denial of the claim and requested an oral argument before an Office hearing representative in an April 2, 2001 letter.

In a March 21, 2001 report, Dr. Marcia G. Beard, a clinical psychologist, diagnosed adjustment disorder. She attributed appellant's condition to harassment at work, job stress and "harsh treatment by coworkers."

A hearing was held on November 7, 2001 at which appellant testified and submitted evidence.

By decision dated February 27, 2002, an Office hearing representative affirmed the March 8, 2001 denial of appellant's claim.

In a letter dated March 18, 2002, appellant requested reconsideration and submitted a February 7, 2002 disability rating by the Department of Veterans Affairs in support of his request. The Department of Veterans Affairs awarded appellant a 50 percent disability rating effective August 1, 2001 for post-traumatic stress disorder on the presumption that the condition was service related.

In a decision dated March 27, 2003, the Office denied modification of its prior decisions.

The Board finds that appellant did not meet his burden of proof to establish that he 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

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 (1987).

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

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

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions, but the Office denied his claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that he was treated unfairly at work and was the victim of discrimination or harassment. 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 may constitute employment factors.⁷ 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.⁸ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination, as alleged and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.⁹ Appellant alleged that supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided insufficient evidence, such as witness statements, to establish that the statements were actually made or that the actions actually occurred.¹⁰ The only witness statement submitted by appellant was from Ms. Merrit. She stated that, she witnessed two incidents with appellant and Mr. McCraney. One incident involved the placement of a u-cart and the other involved Mr. McCraney yelling at appellant to get his big brother. These statements are insufficient as it is unclear whether Ms. Merrit is a coworker and she failed to provide adequate specifics as to the date and time of the incidents involving Mr. McCraney or the situation in which the incident took place. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

With regard to the denial of appellant's leave, letter of warning regarding use of sick leave, not being paid appropriate overtime, the failure to properly submit his pay vouchers, denying his request for tow motor license and being required to perform overtime, these events have to do with personnel matters or administrative matters. The Board finds that these allegations relate to administrative or personnel matters unrelated to the employee's regular or

⁶ *Id.*

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

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

⁹ *See Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁰ *See William P. George*, 43 ECAB 1159, 1167 (1992).

specially assigned work duties and do not fall within the coverage of the Act.¹¹ 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.¹² 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.¹³ The record contains no evidence that the employing establishment acted abusively or erred in requiring appellant to work overtime, denying his leave requests, failing to properly pay him for overtime failure to properly submit his pay vouchers, issuing him a letter of warning on his use of sick leave and denying his request for a tow motor license. Appellant has not established a compensable employment factor under the Act with respect to administrative matters as the evidence pertaining to these allegations fails to establish error or abuse in these administrative matters.

Appellant contends that his stress was due in part to an incident on November 16, 1999 when Mr. Williams, a union vice president, put up several flyers referring to appellant as a scab. Regarding union activities in general, the Board adheres to the principle that union activities are personal in nature and are not considered to be within the course of employment.¹⁴ Complaints against the union lie outside the scope of workers' compensation, as matters pertaining to union activities are not deemed employment factors.¹⁵ As this incident involves a union official and union activity, appellant has not established a compensable factor under the Act with respect to this incident.

Appellant asserted that the February 7, 2002 decision of the Department of Veterans Affairs, which granted him a 50 percent disability rating for post-traumatic stress disorder, established the presence of the claimed emotional condition. However, the findings of other administrative agencies or courts are not determinative with regard to proceedings under the Act.¹⁶ However, the decision attributed this disability solely to appellant's service as a combat infantryman. The decision notes that he was seen in December 2000 regarding complaints of job stress and harassment.

¹¹ See *Janet I. Jones*, 47 ECAB 345 (1996); *Jimmy Gilbreath*, 44 ECAB 555 (1993); *Apple Gate*, 41 ECAB 581 (1990); *Joseph C. DeDonato*, 39 ECAB 1260 (1988).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁴ *Marie Boylan*, 45 ECAB 338, 342 (1994).

¹⁵ *George A. Ross*, 43 ECAB 346, 353 (1991); *Lizzie McCray*, 36 ECAB 419, 421 (1985).

¹⁶ *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001).

Consequently, appellant has failed to establish that he sustained an emotional condition in the performance of duty as alleged, as he did not substantiate any compensable factors of employment.¹⁷

The decision of the Office of Workers' Compensation Programs dated March 27, 2003 is hereby affirmed.

Dated, Washington, DC
December 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁷ *Janice I. Moore*, 53 ECAB ____ (Docket No. 01-2066, issued September 11, 2002); *Diane C. Bernard*, 45 ECAB 223, 228 (1993).