U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND A. ELLIS and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

Docket No. 02-2147; Submitted on the Record;
Issued February 21, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On July 21, 2000 appellant, then a 51-year-old supervisor, filed an occupational disease claim alleging that he sustained job-related stress. Appellant stopped work on June 16, 2000.

In a statement received by the Office of Workers' Compensation Programs on October 3, 2000, appellant related:

> "Specifically I had a lot of difficulty managing the box section and I was constantly being berated by my managers for the way I supervised it. I was provided with adequate tools, equipment, office space.… I was constantly being harassed by my manager Jim Harrington for being out of my area. During these times I was in other areas checking on my mail."

Appellant further related that on December 24, 1999 Mr. Harrington "berated" him in front of coworkers for leaving the building and told him that he "should look for another job." Appellant stated that Mr. Harrington also questioned his use of sick leave and that Joe Zinnitti was sarcastic to him when he called in sick. Appellant further related that Mr. Harrington and Mr. Zinnitti held his leave use against him during a job interview. Appellant also stated that Mr. Harrington assailed his character in 1997 and complimented another supervisor, Jim Tarvares, for spreading rumors about appellant. Appellant further attributed his stress to a confrontation with another supervisor, Mike Grenier, in July 1999 and to a confrontation with an employee, Debra Delanos, in August 1999.

By decision dated February 24, 2001, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an emotional condition causally related to factors of his federal employment. The Office accepted that the July 1, 1999 confrontation between appellant and Mr. Grenier constituted a compensable employment factor

but found that the medical evidence was insufficient to establish an emotional condition resulting from the accepted factor.

In a letter dated March 15, 2001, appellant requested a hearing, which was held on September 26, 2001. By decision dated December 19, 2001, the hearing representative affirmed the Office's February 24, 2001 decision.

Appellant requested reconsideration in a letter dated February 8, 2002. In a decision dated May 14, 2002, the Office denied modification of its prior merit decision.

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]

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[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 attributed his emotional condition, in part, to harassment by his supervisor, Mr. Harrington. Appellant maintained that Mr. Harrington "berated" him for leaving the building in December 1999 and questioning his character. 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.[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 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 discriminated against by his supervisor.[9] In a letter dated January 24, 2001, Mr. Harrington related that on December 24, 1999 he spoke with appellant because appellant left his work area unsupervised. Mr. Harrington stated:

> "I asked [appellant] why he left his work area unsupervised and without notifying any of the [managers]. He stated that he had a craft employee watching it for him. I told him this was unacceptable. I informed him that supervisors in other work areas were depending upon him for mail and his not being here was having a negative impact on their operation. [Appellant] did not think that this was a major issue. The conversation took place in the stairwell and with no other employees around."

Mr. Harrington also stated that in 1997 Mr. Tavares told him that appellant did not cooperate with him and that he spoke with appellant about Mr. Tavares' statement. Appellant has submitted no evidence, such as witness statements, in support of his claim that Mr. Harrington harassed him and thus he has not established a compensable employment factor.

Regarding Mr. Harrington and Mr. Zinnitti questioning his use of sick leave, the Board finds that these allegations relate 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 Act.[10] Although the handling of leave is generally related to employment, it is an administrative function of the employer and not a duty of the employee.[11] 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 this case, appellant did not submit evidence supporting his claim that the employing establishment committed error or abuse regarding his leave usage.

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[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 Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[10] *See John Polito*, 50 ECAB 347 (1999).

[11] *Id*.

The Office properly found that the confrontation between appellant and Mr. Grenier occurred in the performance of duty. An altercation between coworkers, which arose out of a claimant's regular or specially assigned duties would be considered an employment factor, but an altercation which arose out of nonemployment factors, *i.e.*, a purely personal dispute, would not be considered an employment factor.[12] Regarding the July 1, 1999 incident with Mr. Grenier, appellant stated that he took papers off of Mr. Grenier's desk to "check that the numbers are correct as I do every night." Appellant related, "When I first took the reports, no one was at the desk, but when I returned the reports [Mr.] Grenier was sitting there. [Mr. Grenier] asked me why I had his reports. I asked [Mr. Grenier] why he was asking me that question." Appellant stated that Mr. Grenier responded with profanity.[13] The evidence of record confirms that a confrontation occurred between appellant and Mr. Grenier after appellant took papers off of Mr. Grenier's desk in order to perform his employment duties. As the altercation occurred during appellant's performance of his regular assigned employment duties and was not imported into the workplace, it constitutes a compensable employment factor.

The Board further finds that appellant's issuance of a letter of warning to Ms. Delanos, an employee, occurred in the performance of duty. Appellant submitted a letter of warning, which he wrote to Ms. Delanos concerning her conduct on August 31, 1999. Appellant indicated in the letter that Ms. Delanos "snatched" a sign-in sheet from his hand and shouted at him. At the hearing, appellant related that he complained about Ms. Delanos' actions to her supervisor but was told to discipline her himself. Appellant's issuance of a letter of warning to Ms. Delanos in his capacity as a supervisor with the employing establishment constitutes the performance of his employment duties. Where a claimed disability results from an employee's emotional reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Act.[14] Therefore, appellant has established a compensable employment factor under the Act.

In this case, appellant has established compensable factors of employment with respect to the altercation with Mr. Grenier and his issuance of a letter of warning to Ms. Delanos. However, appellant's burden of proof is not discharged by the fact that he has established employment factors which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[15]

In support of his claim, appellant submitted chart notes from Dr. Aminadav Zakai, a Board-certified psychiatrist and his attending physician. In a note dated January 10, 2000, Dr. Zakai diagnosed post-traumatic stress disorder (PTSD), which he found "seems to worsen around work-related stress."[16] In a progress note dated June 16, 2000, Dr. Zakai again diagnosed

[12] *See Irene Bouldin*, 41 ECAB 506, 514 (1990); *Lester O. Rich*, 32 ECAB 1178, 1180 (1981).

[13] It appears from the record that both appellant and Mr. Grenier used profanity towards one another.

[14] *Robert Bartlett*, 51 ECAB 664 (2000).

[15] *See William P. George*, 43 ECAB 1159, 1168 (1992).

[16] Appellant has preexisting service-related PTSD.

PTSD and noted that appellant had missed days at work as a result of stress. Appellant was hospitalized from July 19 to 24, 2000 for chronic and severe PTSD and dysthymia resulting from the PTSD. In a clinic note dated August 24, 2000, Dr. Zakai opined that appellant was permanently disabled from employment.

In a report dated September 5, 2000, Donald Wiggins, a therapist, noted that appellant had been treated for the past 11 years for service-related disability.[17] Mr. Wiggins stated, "Most recently the stress he experiences at work has exacerbated his condition to the point that his social and occupational functions are impaired." In a report dated October 19, 2001, he noted that appellant had PTSD and stated:

> "In July of 1999, [appellant's] symptoms increased due to a problem he had with a supervisor, Mr. Grenier. Again in August of that same year, [appellant] had another problem with a fellow employee when he reached into the office to obtain the sign in sheet. These issue exacerbated [appellant's] PTSD condition and he was referred to Dr. Merman for additional treatment. [Appellant] lost time out of work due to the stress he experienced."

In a chart note dated October 22, 2001, Dr. Zakai indicated that he had reviewed Mr. Wiggins' notes and concurred with his findings.

In a medical report dated January 16, 2002, Dr. Zakai stated:

> "It is my opinion that the incident that occurred with [Mr.] Grenier on July 1, 1999 that occurred at [appellant's] place of employment, [] caused an aggravation to his preexisting diagnosis of PTSD. As a result, [appellant's] condition is severe and disabling and he is unable to deal appropriately with coworkers and supervisors. He is not able to learn new tasks due to his memory and concentration impairment and he is unable to manage typical work-related stress.
>
> "The above impairments are permanent leaving [appellant] completely and permanently disabled and unable to maintain gainful employment."

The Board finds that, although Dr. Zakai did not provide sufficient medical rationale explaining how the accepted factors caused or contributed to appellant's emotional condition, his reports are generally supportive of appellant's claim and sufficient to require further development by the Office. The case, therefore, will be remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence. After such further development as the Office deems necessary, it shall issue an appropriate decision on appellant's entitlement to benefits.

[17] The Board notes that a counselor, or therapist, is not a "physician" within the meaning of the Act and is not competent to render a medical opinion; *see* 5 U.S.C. § 8101(2); *Cloteal Thomas*, 43 ECAB 1093 (1992).

The May 14, 2002 and December 19, 2001 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
February 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member