

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MIKE MITCHELL and U.S. POSTAL SERVICE,
POST OFFICE, Casselberry, FL

*Docket No. 03-1247; Submitted on the Record;
Issued July 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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.

Appellant, a 42-year-old letter carrier, filed a notice of traumatic injury on June 26, 2000 alleging that on June 19, 2000 he sustained job-related anger and depression as a result of undue and excessive discrimination and harassment by his supervisor.

In a letter dated July 21, 2000, the Office of Workers' Compensation Programs requested additional factual and medical evidence from appellant. Appellant responded and alleged additional dates of harassment. By decision dated July 20, 2001, the Office denied appellant's claim finding that he failed to substantiate a compensable employment factor.

Appellant, through his attorney, requested an oral hearing on August 15, 2001. Appellant testified at his oral hearing on October 30, 2002. By decision dated January 16, 2003, the hearing representative affirmed the Office's July 20, 2001 decision finding that appellant had not substantiated a compensable employment factor.

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed an emotional condition due 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

Appellant attributed his emotional condition to actions of his supervisors. Appellant alleged that Curtis Turner, a supervisor, required that he submit medical documentation in support of his sick leave usage. Mr. Turner stated that documentation was necessary as appellant was planning to be absent three Mondays in a row. Appellant stated that he was absent due to a holiday and approved sick leave. Appellant also alleged that Mr. Turner refused to accept medical documentation of sick leave when the physician mistakenly listed the wrong date of treatment. Appellant alleged that Neftali Pluguez, a supervisor, only allowed him a half day sick leave for medical appointments.

Appellant also alleged that Mr. Turner questioned him regarding writing on the mail and forwarding certified mail and conducted improper investigative interviews when appellant refused to continue to delivering mail beyond his eight-hour a day work restriction. He stated that Mr. Turner forced him to use overtime in violation of his medical restrictions, that Mr. Turner refused to provide him with auxiliary assistance when requested and that Mr. Turner instructed appellant to leave "mark-ups."

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly addressed leave, and improperly monitored his work duties, 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.² 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.³ In regard to the above-mentioned incidents of employment, appellant has submitted no evidence to establish error or abuse on the part of the employing establishment or his supervisors.

Appellant stated that on July 15, 2000 Mr. Turner instructed him to report to work on his day off to complete labeling his case. Appellant alleged that as he was not on the overtime desired list, this was a contract violation. Mr. Turner denied that he requested that appellant report to work on his day off. Appellant submitted witness statements from Edward F. Walsh, a carrier, asserting that Mr. Turner instructed appellant to come in on his nonscheduled day and install labels. Alex J. Herrera, an acting supervisor, submitted a statement and asserted that Mr. Turner instructed appellant to come in on his next day off and attach labels. The Board finds

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

² 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).

³ *Martha L. Watson*, 46 ECAB 407 (1995).

that appellant has established that Mr. Turner requested that he report to work on his day off. However, the record does not contain any corroborating evidence that this request was in error on the part of Mr. Turner. It is appellant's burden of proof to submit the necessary evidence to establish his claim. As there is no evidence in the record that Mr. Turner's request was inappropriate, the Board finds that appellant has not established that this request is a compensable employment factor.

Appellant attributed his emotional condition to the mishandling of confidential medical information by the employing establishment. Appellant stated that a coworker specifically mentioned appellant's diagnosed condition of "anger and depression." In a statement dated August 18, 2000, Edward Haupt, a union steward, reported overhearing a conversation between appellant and the postmaster, Mr. Crosby, during which appellant complained of the improper distribution of his medical records and Mr. Crosby allegedly replied that he had heard of the situation and had moved the supervisor's podium as a result. The Board finds that the only evidence of record on this issue establishes that the confidential medical information was mishandled by the employing establishment.

On June 17, 2000 appellant alleged that Mr. Turner referred to him as "Buddy Boy." Mr. Turner denied that he was directing these words at appellant and stated that he tried to make appellant understand that although he recognized the words were not appropriate he was not directing the remark to appellant. In a statement dated September 28, 2000, Randy Gingrinch, a carrier, reported that he witnessed a conversation between appellant and Mr. Turner on June 17, 2000 during which Mr. Turner called appellant "Buddy Boy." The use of an epithet, which is derogatory in nature, can constitute harassment and discrimination under the Act.⁴ The Board has found that referring to a black apprentice as an "ape"⁵ or referring to a Puerto Rican employee as a "lazy spick"⁶ are derogatory terms and rise to the level of verbal abuse. However, the Board finds that use of the term "Buddy Boy" in this case does not rise to the level of verbal abuse under the Act.⁷

Appellant also alleged that the actions of his supervisors constituted harassment and discrimination. 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.⁸ As appellant has not submitted any factual evidence supporting his claim for harassment or discrimination, he has failed to establish this compensable factor of employment.

⁴ *Felix Flecha*, 52 ECAB 268, 273 (2001).

⁵ *Abe Scott*, 45 ECAB 164 (1993).

⁶ *Flecha*, *supra* note 4.

⁷ See *Denis M. Dupor*, 51 ECAB 482 (2000).

⁸ *Alice M. Washington*, 46 ECAB 382 (1994).

Appellant has established that the employing establishment did not appropriately preserve the confidentiality of his medical records. However, appellant's burden of proof is not discharged by the fact that he has established a factor of his employment 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.⁹

Appellant submitted a report dated June 22, 2000 from Dr. Victor N. Ogilvie, a clinical psychologist, who diagnosed adjustment disorder with mixed emotional features and job stress. He noted that appellant reported friction with his supervisor at work. However, Dr. Ogilvie did not provide a history of injury addressing the accepted employment factor and did not provide an opinion on the causal relationship between appellant's diagnosed condition and his employment. Therefore this report is not sufficient to meet appellant's burden of proof.

In support of his claim, appellant submitted a note dated July 17, 2000 from Dr. Arnold M. Schenker, a psychiatrist, diagnosing job-related anger and depression. Dr. Schenker did not describe the accepted employment factor or provide an opinion on the causal relationship between the accepted employment factor and appellant's diagnosed condition. For these reasons, his report is not sufficient to meet appellant's burden of proof.

Dr. Richard C.W. Hall, a Board-certified psychiatrist of professorial rank, completed a report on October 12, 2000. The report as contained in the record does not provide a diagnosis nor a detailed history of injury merely noting a "specific series of stresses and altercations with a supervisor, Mr. Turner...." This report does not provide an accurate factual background of appellant's employment or interaction with his supervisor.

On November 7, 2000 Dr. Patrick K. Dobbins stated that appellant could return to full duty and recommended a supervisor other than Mr. Turner. This report also does not contain a history of injury nor a diagnosis of appellant's condition and is therefore insufficient to establish appellant's claim for an emotional condition.

Appellant has failed to submit the necessary medical evidence to establish that he developed an emotional condition as a result of the compensable employment factor established. Therefore, the Office properly denied his claim.

⁹ See *William P. George*, 43 ECAB 1159, 1168 (1992).

The decision of the Office of Workers' Compensation Programs dated January 16, 2003 is hereby affirmed.

Dated, Washington, DC
July 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member