U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TARRANCE D. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, St. Petersburg, FL

Docket No. 02-2235; Submitted on the Record;
Issued June 26, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant sustained an emotional condition in the performance of his federal duties.

On October 31, 2000 appellant, then a 35-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that disparate treatment, a hostile work environment and management harassment at his federal employment caused him to suffer chronic depression and anxiety disorder with panic attacks. He did not stop working. In a statement received on December 5, 2000, appellant further explained the alleged incidents he believes caused his medical condition. On November 4, 1998 he was denied sick leave to care for his sick son. On January 9, 1999 appellant was called into an investigative meeting regarding attending a friend's funeral when, according to appellant, his leave had already been approved. On January 19, February 18, March 1, May 30, June 11 and 17 and July 20, 1999 he was called into his supervisor's office to discuss why he had not completed his route in eight hours. On March 17, 1999 appellant was harassed in a loud and embarrassing way on a public street by supervisors John Batson and Tony Long for not securing the mail while delivering his route. According to him the vehicle was never out of his sight and he had notified management that some locks on the vehicle were not secure. On March 25, 1999 appellant was told this complaint was dropped. On April 30, 1999 he was charged four hours of sick leave when he was working light duty at another location. Though this error was eventually corrected, it was not done right away. On June 10, 1999 appellant was told by a coworker that supervisor Jack Raulerson had pressured the coworker to falsify a statement related to how long the coworker assisted appellant on his route. On July 26, 1999 he was asked for medical documentation (Form CA-17) by Mr. Raulerson to confirm that appellant had been to the physician even though appellant had just had a cast put on his foot. On September 19, 1999 appellant was denied access to a report regarding a dog attack he suffered. On June 20, 2000 he was followed and watched by someone with a gun who appellant alleges was a postal inspector. On July 25, 2000 appellant was investigated for being rude when it was another carrier, working appellant's route while appellant was on vacation, whose actions had caused the complaint. On August 25, 2000 he was

spoken to in an angry and loud voice by a supervisor who had read appellant's allegations about the supervisor in an Equal Employment Opportunity (EEO) complaint.

In a December 12, 2000 statement, Mr. Baston responded to appellant's allegations. He wrote that he did not deny appellant's leave request but he did tell appellant that he would have to substantiate that his child was ill. Mr. Baston tried to accommodate appellant's request to attend the funeral, but it was complicated by the fact that the funeral was on a Saturday and other employees had already requested the day off. Appellant was questioned about not completing his route in eight hours because appellant repeatedly failed to follow the rule that he was to notify his supervisor prior to leaving on the route if he anticipated needing help. Instead, as was his practice, he called in from the route requesting overtime. The supervisor denied harassing appellant on a public street, but he did observe and correct appellant for leaving the mail unsecured. He added that the locks had been fixed on appellant's vehicle. Appellant was not charged four hours of sick leave on April 30, 1999. He was actually credited with working over eight hours that day.

In an undated statement customer service manager, Clarence Burdick, wrote that he mistakenly told appellant that he been granted leave to attend the funeral when, in fact, appellant's supervisor had wanted him to come to work for a few hours first. In an August 12, 2000 letter, Christine Kohut, a supervisor in customer service, wrote that she told appellant that there was a mistake regarding the customer complaint and that she wrote him an apology. In an April 12, 2001 letter, Pam West, a manager in customer service, wrote that appellant had a long history of performance problems, that he always treated any attempts by management to improve his performance on the route as harassment and that it always appeared he was trying to build a case for an EEO complaint.

Appellant also submitted a decision, by the EEO that concluded that he had submitted sufficient evidence of hostile environment for the EEO to issue a complaint.

In an August 20, 2001 decision, the Office of Workers' Compensation Programs denied appellant's claim finding that he had not alleged a compensable factor and, therefore, his medical condition did not arise in the performance of his federal duties.

In a September 18, 2001 letter, appellant requested an oral hearing. In support of his request, appellant submitted witness statements. In a March 20, 2002 statement, Boyd Jenkins, a coworker, wrote that he saw appellant treated in a loud, embarrassing, belittling and unprofessional manner; and that appellant was constantly called into the supervisor's office.

In a March 20, 2002 statement, Gilda Durant, a coworker, said that she had personal knowledge of appellant being harassed by supervisors. In an April 28, 2001 statement, Mark Rutan wrote that he had been a previous carrier on appellant's route and that he seldom completed it in eight hours but was not reprimanded. In a December 7, 2000 statement, Steve McSmith wrote that he was a coworker, former union steward and appellant's trainer when he started working at the employing establishment and that in his opinion appellant was a good worker. Mr. McSmith added that he did not understand why management was harassing appellant. In a March 20, 2002 statement, James Bell, a coworker, wrote that he knew appellant's route was too long and that management seemed to enjoy making a spectacle of

(appellant) on the work floor. In a July 12, 1999 statement, Kevin Reinke wrote that he had appellant's route on temporary assignments and that it was too long and that he had a discussion with Mr. Burke, who agreed that it was too long. In an undated statement, Olivia Flemming, a postal customer, wrote that on March 16 or 17, 1999 she saw two men yelling and pointing a finger at appellant on the street.

At the hearing appellant stated that the basis of his complaint was that he was subjected to abusive, loud and embarrassing harassment by his supervisors on the work floor in front of coworkers and on the streets. He also testified that his route was later reduced.

In an April 24, 2002 statement, Mr. Long stated that appellant's route was adjusted because appellant had injured his leg and was not expected to complete it in eight hours while he had an injury.

In an October 9, 2000 handwritten note, Dr. Gary K. Arthur, Board-certified in psychiatry and neurology, wrote that appellant is currently under my care for the diagnosis of dysthymic disorder, (chronic depression) and anxiety disorder with panic attacks. Both these conditions were directly precipitated by hostile interactions with and harassment from management at (his work).

In an October 15, 2000 report, Dr. Arthur diagnosed appellant with chronic anxiety disorder with panic attacks, causally related to appellant's work. He wrote that appellant attributed his condition to a consistent pattern of harassment by supervisors at his job. Specific incidents cited include: repeated and official discussions about time taken for medical treatment, being charged with sick leave even, though he worked light duty, being wrongfully accused of getting into an argument with a customer, being followed and a refusal to properly date his restrictions regarding broken bones in his right foot from an on-the-job injury.

In a December 12, 2000 report, Dr. Arthur wrote "I would like to add to my original report that [appellant] is now showing signs of [p]ost[-][t]raumatic [s]tress [s]yndrome directly related to harassment and a hostile work environment. These symptoms include hyperventilation, constant anxiety, panic attacks and nightmares about work."

In a June 14, 2002 decision, the hearing representative affirmed the denial of appellant's claim finding the medical evidence insufficient. The hearing representative did find one compensable factor of employment, that appellant was falsely accused of being rude to a customer, for which management apologized.

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of his federal duties.

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]

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated June 14, 2002, the Office found that appellant alleged only one compensable employment factor. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave and unreasonably monitored his activities at work, 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.[7] 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

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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.*

[7] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

employment, they are administrative functions of the employer and not duties of the employee.[8] 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.[9]

In the present case, appellant's supervisors falsely accused him of being rude to a customer; an action they later apologized for. The hearing representative found sufficient evidence to establish an error on the part of the employing establishment. The Board affirms that finding. Thus, appellant has established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[10] 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.[11]

In the present 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 supervisors.[12] Appellant alleged that supervisors made statements and engaged in actions, which he believed constituted harassment and discrimination. But the corroborating evidence he submitted such as witness statements, to establish that the statements actually were made or that the actions actually occurred, were too general in nature and, therefore, insufficient to establish specific incidences of harassment or abuse.[13] For example, statements that a witness has personal, but unspecified, knowledge of appellant being harassed, or that the witness saw appellant frequently called into the supervisor's office are insufficient because they do not corroborate a specific incident or words spoken as alleged by the appellant.

Ms. Flemming's statement that she saw two men yelling and pointing a finger at appellant on or about March 16 or 17, 1999 is insufficient to support appellant's allegation that he was abused and harassed on that day because Ms. Flemming did not hear what was said.

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[8] *Id.*

[9] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

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

[11] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[12] *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).

[13] *See William P. George*, 43 ECAB 1159, 1167 (1992).

Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

The Board has held that emotional reactions to situations, in which an employee is trying to meet his position requirements are compensable.[14] In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines.

In the present case, appellant alleged that his route was too long to be completed in eight hours and this resulted in several official meetings with his supervisors. He alleged harassment based not on the route itself, but how management responded to how he performed his job. In other words, appellant is not alleging that he developed his medical condition because his route was too long, but because his supervisors responded to his argument that his route was too long. This allegation does not arise from an employment factor. Additionally, Mr. Batson explained that he frequently met with appellant because he failed to follow the rule of notifying management of the long route before leaving to the employing establishment.

Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[15]

The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[16] In the present case, the employing establishment has denied verbally abusing appellant and appellant has not submitted sufficient corroborating evidence to establish specific incidences of verbal abuse.

For the foregoing reasons, appellant has established only one compensable employment factor under the Act. That factor is the false allegation that appellant was rude to a customer. 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.[17]

The hearing representative looked at the medical evidence in the record in light of the one accepted factor and determined that it was insufficient because it was only one of several factors cited by Dr. Arthur as causally relating appellant's emotional condition to his employment.

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[14] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

[15] *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

[16] *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

[17] *Id.*

The Board finds that the medical evidence is insufficient to establish that appellant sustained an emotional condition in the performance of his federal duties. To establish that an emotional condition was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[18]

Dr. Arthur submitted three medical reports, but only one report mentioned the fact that appellant was falsely accused of arguing with a customer. In his October 15, 2000 report, he wrote that appellant, not Dr. Arthur, attributed his emotional condition to being falsely accused of arguing with a customer. Within that report this accusation was one of several allegations that appellant attributes as causing his emotional condition. Moreover, Dr. Arthur did not provide a rationalized explanation of how that single incident caused or contributed to appellant's multiple conditions that he diagnosed including dysthymic disorder, anxiety disorder with panic attacks and post-traumatic stress syndrome. Absent a rationalized statement explaining how this one accepted factor caused his emotional conditions, appellant has not met his burden of proof.

The June 14, 2002 decision of the Office of Worker's Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 26, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[18] *Bonnie Goodman*, 50 ECAB 139 (1998); *Samuel Senkow*, 50 ECAB 370 (1999).