

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAMON B. ZARZESKI and U.S. POSTAL SERVICE,
SUNCOAST DISTRICT ACCOUNTING OFFICE, Tampa, FL

*Docket No. 03-634; Submitted on the Record;
Issued June 9, 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.

Appellant, a 49-year-old manager of account operations, filed a notice of traumatic injury on September 12, 2000 alleging that he developed a major depressive disorder and acute stress disorder due to factors of his federal employment including the fact that he was asked to leave his position and assigned to a lower grade position with retained salary. By decision dated July 5, 2001, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to substantiate a compensable factor of employment.

Appellant requested an oral hearing on July 18, 2001. He testified at his oral hearing on December 13, 2001. By decision dated March 15, 2002, the hearing representative affirmed the Office's July 5, 2001 decision finding that appellant had not substantiated a compensable factor of employment.

In a letter dated July 26, 2002, appellant requested reconsideration and submitted additional factual evidence. The Office reviewed appellant's claim on the merits on November 20, 2002 and found that he had not submitted sufficient evidence to warrant modification of its March 15, 2002 decision.

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 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 to hold a particular position.¹

Appellant attributed his emotional condition to actions of his supervisor, Julia Lavender. He alleged that Mrs. Lavender was not pleased with his work; that she communicated directly with his staff, undermining his authority; that she mandated that he institute discipline and then reprimanded him for these actions; and that on his last day of work she requested a copy of his job description. Appellant also stated that Mrs. Lavender erred in issuing a letter of warning for failing to follow instructions and in removing him from his position and coercing him to take a lower grade position. Regarding appellant's allegations that the employing establishment through Mrs. Lavender engaged in improper disciplinary actions; issued unfair performance evaluations, improperly assigned work duties and unreasonably monitored his work activities, these allegations relate to administrative or personnel matters.² As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation 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

Mrs. Lavender responded to appellant's allegations and asserted that his performance was unsatisfactory, that she did not undermine appellant's authority with his staff and that she did not require him to discipline his employees. She also stated that appellant agreed to take the lower grade position with retained salary. Appellant signed the management initiated change to a lower level on May 16, 2000. The record also included a Merit System Protection Board finding that appellant had not established that his change to a lower grade position was due to duress, coercion or misrepresentation. As Mrs. Lavender denied appellant's allegations and as the record does not contain evidence establishing error or abuse in these personnel matters, the Board finds that appellant has not established a compensable factor in these matters.

Appellant alleged that Mrs. Lavender assigned him unreasonable tasks beyond the employing establishment mission; that he was required to work outside his position description and that he was forced to work long hours at work and at home. He further stated that Mrs. Lavender held him accountable for the actions of managers who did not report to him. The Board has held that overwork, if substantiated is a compensable factor of employment.⁴ Mrs. Lavender responded and stated that appellant was not required to work beyond the employing establishment mission statement, that he never complained that the assigned tasks were unreasonable and that he did not work long hours or on the weekends. Mrs. Lavender denied appellant's allegations of overwork and appellant has not substantiated the compensable

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

² 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).

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

⁴ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

factor of overwork with any evidence. Therefore, the Board finds that appellant has not established that he was overworked.

Appellant attributed his emotional condition to the requirement that he make an impromptu presentation. He asserted that Mrs. Lavender forced him to give a presentation without preparation. Mrs. Lavender stated that she did not expect a prepared presentation but that appellant did not mention major concerns. The Board notes that appellant had a specially assigned duty, to give an off-the-cuff presentation and that he felt that this job duty was stressful. Mrs. Lavender admitted that appellant was required to give the presentation and that she felt that his effort was inadequate. Therefore appellant has substantiated that he was assigned a special duty and established a compensable factor of employment, giving the presentation.

Appellant alleged that Mrs. Lavender assigned him work duties outside his position description specifically managing the postal systems coordinator operation and financial systems coordinator operation. His personal achievement plan and performance improvement plan included references to the postal systems coordinator duties while his position description does not specifically mention this program. Appellant alleged that Mrs. Lavender accused him of not completing enough reporting unit audits and described the difficulties of working with a temporary work force resulting in an ongoing training cycle. He has also alleged that his emotional condition was due in part to this duty, a compensable factor of employment.

Appellant alleged that Mrs. Lavender harassed him and discriminated against him based on his gender, religion and age. In addition to the above-mentioned incidents, he stated that Mrs. Lavender singled him out for embarrassment by instructing him to change seats during a meeting and by canceling his security card so that he could no longer freely enter the building after his assignment changed. Appellant alleged harassment as she requested a copy of his position description and through telephone calls asking for his decision regarding the change in position. Although he has submitted evidence that the specific events occurred, he has not established harassment or discrimination through Mrs. Lavender's actions. 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.⁵ Appellant has not submitted any corroborating evidence establishing that Mrs. Lavender's actions constituted harassment or discrimination. Without supporting evidence establishing that the harassment or discrimination occurred as alleged appellant has failed to meet his burden of proof in establishing that harassment or discrimination were compensable factors of employment.

In the present case, appellant has identified compensable factors of employment with respect to an off-the-cuff presentation and the specially assigned duty of postal systems coordinator duties. However, his 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.

⁵ *Alice M. Washington*, 46 ECAB 382 (1994).

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 factors.⁶

In a report dated August 24, 2000, Dr. Gerard E. Boutin, a clinical psychologist, diagnosed major depressive disorder and acute stress disorder. He opined that appellant's illness was caused by his employment. As Dr. Boutin did not address the specific factors accepted by the Board as compensable, his report is not sufficient to meet appellant's burden of proof in establishing that his emotional condition was due to his federal employment.

In a report dated February 12, 2001, Dr. Felix A. Vicenta⁷ reviewed a findings dated January 30, 2001 from Dr. Anthony Reading, a Board-certified psychiatrist, who attributed appellant's emotional condition to his "uncalled for demotion at work." The Board has not accepted that appellant's demotion was a compensable factor of employment. As this is the only factor mentioned, this report is not sufficient to meet appellant's burden of proof in establishing that he developed an emotional condition due to factors of his federal employment. As appellant has not submitted the necessary rationalized medical opinion evidence establishing that his emotional condition was caused by compensable employment factors, his claim must be denied.

The November 20, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed as modified.

Dated, Washington, DC
June 9, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *William P. George*, 43 ECAB 1159, 1168 (1992).

⁷ Dr. Vicenta is not listed in the physicians reference American Medical Association, *Guides to the Evaluation of Permanent Impairment*.