U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE VILLALVAZO and U.S. POSTAL SERVICE,
SHAFTER POST OFFICE, Shafter, CA

Docket No. 03-725; Submitted on the Record;
Issued June 10, 2003

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition that aggravated his preexisting hypertension and diabetes in the performance of duty.

On August 30, 2000 appellant, then a 44-year-old letter carrier, filed an occupational disease claim alleging that on July 14, 2000 he first became aware of his hypertension and diabetes. He stated that on August 15, 2000 he first realized that his conditions were caused by factors of his employment.[1] Appellant also stated that job stress and pressure had increased and that he felt this had affected his blood pressure and diabetes. He further stated that, in May 1988, he was treated for hypertension by Dr. Jae E. Kim, an internist, who later refused to treat him due to harassment from Postmaster John Smith. Appellant indicated that he became a patient of Dr. Jong C. Moon, a general practitioner, after an incident at work, which caused his blood pressure to rise and that he was sent to a specialist and subsequently diagnosed with diabetes. He also attributed the aggravation of his hypertension and diabetes to a hostile work environment and verbal abuse followed by constant harassment from Postmaster Smith. Appellant stated that on route count inspection day Postmaster Smith came out with supervisor Button Willow and started harassing him, which was against policy. He stated that, when he returned from his route, a union representative advised him to seek medical attention because he did not look or feel good. Appellant further stated that Postmaster Smith and his supervisors harassed him one to six hours a day, four to five days a week. He noted that his coworkers, Jerry Patterson, Kevin Lanza and Craig Kleins transferred out due to the treatment they received from Postmaster Smith. Appellant submitted medical evidence in support of his claim.

In response to appellant's allegations, Postmaster Smith submitted a September 21, 2000 narrative statement and medical evidence.

---

[1] Appellant retired from the employing establishment on disability.

In an October 25, 2000 letter, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised appellant about the type of factual and medical evidence he needed to submit to establish his claim. In a letter of the same date, the Office advised the employing establishment to submit additional factual evidence regarding appellant's claim.

In response, appellant's supervisor, Robert J. McCall, submitted a December 27, 2000 narrative statement regarding appellant's allegations. Appellant submitted additional factual and medical evidence.

By decision dated March 1, 2001, the Office found that the evidence of record was insufficient to establish that appellant sustained an emotional condition causally related to factors of his employment that aggravated his preexisting hypertension and diabetes. In an undated letter, appellant requested reconsideration. He alleged that the accompanying factual and medical evidence established that his stress was caused by management's pressure to finish his route in eight hours after adding an additional 25 minutes to the route.

On March 14, 2002 an Office senior claims examiner held a telephone conference with Postmaster Smith regarding appellant's allegation that his workday and workload were increased. The Office prepared a memorandum regarding this conference and by letter dated March 14, 2002 advised Postmaster Smith and appellant to submit any comments or corrections regarding the memorandum within 15 days. In a March 19, 2002 letter, Postmaster Smith stated that the memorandum correctly reflected the telephone conference. Appellant did not respond.

By decision dated March 29, 2002, the Office denied appellant's request for modification based on a merit review of the claim. In a September 17, 2002 letter, appellant requested reconsideration accompanied by factual evidence.

In a decision dated December 18, 2002, the Office again denied appellant's request for modification.

The Board finds that appellant has failed to establish that he sustained an emotional condition that aggravated his preexisting hypertension and diabetes in the performance of duty.

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

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

[2] *Vaile F. Walders*, 46 ECAB 822 (1995).

has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3]

The initial question presented is whether appellant has substantiated compensable factors of employment as contributing to his emotional condition.[4] If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.[5]

In the present case, appellant has primarily alleged that Postmaster Smith and his supervisors harassed him. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable.[6] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment occurred.[7]

Appellant alleged that, while under the medical care of Dr. Kim in May 1988, Dr. Kim refused to further treat him because Postmaster Smith harassed him. In response, Postmaster Smith denied any knowledge that appellant was being treated for hypertension in May 1988. He noted that he did not become postmaster until August 1988. He stated that there was a document indicating that appellant was treated by Dr. Kim for a shoulder condition from May 9 through 30, 1988. Postmaster Smith stated that he had no knowledge of any medical problems until the route inspections in February 1994. He indicated that appellant became ill on the second day of the route count inspection and went home. Postmaster Smith received a medical note from Dr. Moon indicating that appellant had acute tension status hypertension, but that he did not have knowledge of any other conditions until he received a July 3, 2000 slip from Dr. Kazmi[8] indicating that appellant had diabetes. Based on Postmaster Smith's statements, appellant has failed to establish that his inability to receive medical treatment was caused by harassment from Postmaster Smith.

---

[3] *Mary Boylan*, 45 ECAB 338 (1994); 5 U.S.C. §§ 8101-8193.

[4] *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

[5] *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

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

[7] *William E. Seare*, 47 ECAB 663 (1996).

[8] The record does not contain a medical report from Dr. Kazmi, thus his professional qualifications cannot be determined.

Appellant further alleged that Postmaster Smith harassed him during a route count inspection. His allegation involves an administrative or personnel matter. It is an administrative function to supervise employees and see that they are tending to their tasks during work hours.[9] Such matters, while generally related to the employment, are administrative functions of the employer, not duties of the employee.[10] As such, they do not fall within coverage of the Act, unless the evidence discloses error or abuse on the part of the employing establishment.[11] In this case, appellant has failed to provide any evidence of error or abuse on the part of the employing establishment in carrying out the above administrative function.

Appellant submitted an undated statement from Mr. Patterson, a coworker, indicating that management harassed appellant every time about his 10-day holds and that he received a letter of warning for it.

In another statement, Mr. Patterson indicated that he witnessed Postmaster Smith intimidate appellant by pacing back and forth while appellant loaded the mail for his route into his vehicle. He stated that Postmaster Smith's actions caused appellant to become upset and nervous. Mr. Patterson also stated that Mr. McCall told him to tell appellant to improve on his route or disciplinary action would be taken against him. He indicated that he transferred due to Postmaster Smith's insensitive remarks about his brother's death. Mr. Patterson noted a change in appellant's demeanor over the last three years and his attempt to help him cope. He noted that no disciplinary action was taken against him when he had a moving violation. Mr. Patterson also noted that Mr. McCall would always tell appellant to "make his time" on the route and not to bring any mail back.

In an additional statement, Mr. Patterson indicated that a route count was conducted in 1994 and that appellant was scrutinized while on his route by Postmaster Smith and other supervisors. As a result, he stated that he accompanied appellant to Dr. Moon, who found that appellant's blood pressure was high.

In response to appellant's allegation, Postmaster Smith stated that the route count inspection occurred in February 1994 and it was completed with a supervisor accompanying appellant the entire day. He stated that on the next day without a supervisor and less mail, appellant took longer to deliver the mail. Postmaster Smith further stated that, when appellant was questioned about this, he became upset and went home sick without an explanation for the rest of the week. He noted that appellant filed an occupational disease claim on February 9, 1994.[12] Postmaster Smith further noted that a reinspection was rescheduled and the results confirmed the suspicions of supervisor Vicki Christian and himself. Postmaster Smith stated that appellant's route averaged 7 hours and 43 minutes for 6 days.

[9] *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[10] *Janet I. Jones*, 47 ECAB 345 (1996).

[11] *Richard J. Dube*, 42 ECAB 916 (1991).

[12] Postmaster Smith indicated that appellant's claim was denied.

Regarding the supervision of appellant, Postmaster Smith explained that appellant was supervised by a delivery unit supervisor who along with himself observed all carriers in the performance of their assigned duties in the office and on the street. He further explained that this helped to identify problem areas where improvement was needed. Postmaster Smith stated that all routes and carries were observed to improve the operations and mail service to customers. He noted that his office had six city routes and one rural route so observations were spread over the entire week. Postmaster Smith indicated that usually the supervisor would observe a carrier on the street 2 or 3 times a week for 10 to 15 minutes per observation and if needed he may accompany the carrier around the entire route for an entire day.

Mr. McCall noted a provision of the employing establishment's employee handbook indicating that carriers may expect to be supervised at all times while in the performance of their daily duties. He further noted appellant's route count in 1994 and stated that on numerous occasions appellant expanded his street time to one hour or more. Mr. McCall stated that it was the responsibility of the management to do street observations and supervision in order to ascertain why an employee was not meeting the expectations that were established by past performance. He indicated the number of times he observed employees during the week and stated that he had spent more time on appellant's route.

Although appellant submitted witness statements from his coworker indicating that his supervisors were watching him, there is no evidence that appellant's supervisors erred or acted abusively in monitoring his work activities. Based on the statements of Postmaster Smith and Mr. McCall, appellant was being watched in accordance with employing establishment policy. Thus, it does not appear that appellant's supervisors were being unreasonable or abusive in monitoring his work activities. Appellant has not established a compensable employment factor under the Act.

Appellant also alleged that he was verbally abused by Postmaster Smith and his supervisors, which aggravated his hypertension and diabetes. Although Mr. Patterson indicated that Postmaster Smith made an insensitive remark to him about the death of his brother, he did not provide any evidence that Postmaster Smith or any other supervisors verbally abused appellant. Thus, appellant has not established a compensable factor of employment.

Appellant further alleges that an increase in his workday and workload caused him stress. Overwork can be a compensable factor of employment if substantiated by the record since it relates to assigned work duties.[13] The record does not substantiate appellant's allegation that his workday and work duties increased due to the assignment of additional mailboxes to his route.

Mr. Patterson stated that, after the rescheduling of appellant's route count, the route was adjusted to eight hours. In 1998 there was growth on appellant's route and all the new growth went to appellant's route according to Mr. Patterson. He stated that appellant told the postmaster and his supervisor that he would not be able to make it back in time. Mr. Patterson related that appellant tried to get out of the office early or asked Postmaster Smith for help. He stated that Postmaster Smith responded that appellant was getting out early and that he did not need any help. Everyday appellant returned 10 to 15 minutes late and was called into the office to explain

[13] *See Georgia F. Kennedy*, 35 ECAB 1151 (1984).

why he was tardy. Mr. Patterson related that management eventually helped appellant get back on time by having someone put up his flats and he was still questioned by management when he returned to the office late. He further related that appellant's route increased from 702 stops to more than 727 stops.

Les Armstrong, appellant's coworker, stated that in May 2000 appellant was told by Postmaster Smith that a new section of housing was added to his route. He noted that routes had been previously adjusted to 8 hours and that additional deliveries would add approximately 25 minutes to appellant's route. Mr. Armstrong stated that he personally observed several instances where management made degrading comments concerning appellant's ability to carry his route in eight hours. He further stated that appellant's times were compared to other carriers who skipped their lunch and breaks to complete appellant's route in eight hours. As a shop steward at that time, Mr. Armstrong stated that this was a violation of employing establishment rules and regulations. He concluded that he observed management put a lot of pressure and stress on appellant because he could no longer carry his route in eight hours.

In additional statements, Mr. Armstrong provided that appellant should have been given a six-day route check before the new housing areas were added to his route, but Postmaster Smith probably added it with the intent of making appellant carry the route as fast as a new carrier. He stated that there were two routes, 6304 and 6305, that should have received the additional load, but they belonged to two of Postmaster Smith's favorite carriers. Mr. Armstrong noted that the "T6" carrier is faster on their routes because she skips breaks and sometimes lunch or takes a short lunch to try to make herself look good to management.

In an April 13, 2002 statement, Dan Turner, appellant's coworker, indicated that he witnessed appellant working overtime in carrying his route due to the length of it.

In response to appellant's allegation that he was overworked, Postmaster Smith stated in a March 14, 2002 telephone conference with an Office representative that when appellant's route was last counted in 1994, it was 7 hours and 35 minutes, which meant the route was not an 8-hour job. He further stated that this determination was based on an average of six days of mail. In 1999 a new tract of homes was added to appellant's route, which involved delivery to 3 additional stops with 50 to 60 locking boxes. Postmaster Smith explained that the total evaluated time for additional work was less than 30 minutes noting that the additional workload never went through a formal evaluation. He further explained that this route could pick up additional work because originally it was less than eight hours.[14]

Mr. McCall stated that on July 27, 2000 appellant requested and received help prior to leaving the office to start his street duties. He stated that appellant should have been able to complete his route in a timely manner and when appellant called him to say he was running one-half hour late, he told him to keep going and that he would check on him later. Mr. McCall stated that 30 minutes later he checked on appellant and where he was on his route. He indicated that based on past performance, appellant should have been able to make it back on time without

[14] Postmaster Smith indicated that currently a second tract of homes had been added to the route and the route may now be subject to evaluation. The Office representative responded that she was only concerned about the first addition to appellant's workload in 1999.

any assistance on the street. Mr. McCall advised appellant that he did not need any help and that if he did not make it back on time with no mail, then corrective action would be taken. He denied telling appellant that, if he could not handle it, he should look for another job.

The statements of Mr. Patterson, Mr. Armstrong and Mr. Turner are insufficient to establish appellant's burden because the employing establishment set forth appellant's work schedule, which did not appear to exceed a normal work week schedule. Further, Mr. Armstrong's statement that management made degrading comments about appellant's inability to carry his route in eight hours is insufficient to establish appellant's burden because he failed to identify the specific comments made by management.

Appellant's filing of grievances regarding the issuance of a seven-day suspension for unauthorized delay of mail and a letter of warning for making an improper U-turn by the employing establishment constitute administrative or personnel matters.[15] Mr. McCall stated that on July 11, 2000 he discovered 11 pieces of mail, the earliest dated March 30, 2000, at appellant's case in the vacation holdout and on July 18, 2000 he issued a letter of warning to appellant for unauthorized delay of mail. He further stated that on July 13, 2000 Postmaster Smith observed appellant make an unsafe and improper U-turn. Mr. McCall indicated that he had a discussion with appellant on that date about the U-turn and informed him to finish delivering the mail before going to lunch. He stated that appellant had a negative attitude and stated that he was going to contact his union steward and see his doctor. Mr. McCall noted that appellant called in sick the next day and remained off work for eight days. On July 19, 2000 he issued a letter of warning for the improper U-turn. On July 22, 2000 Mr. McCall had a discussion with appellant in the presence of appellant's union representative regarding mail brought back to the office by a relief carrier that was dated December 1998. He explained the employing establishment's policy regarding this type of mail to appellant and the relief carrier, and the possible consequence of termination if the policy was violated.

A September 15, 2000 settlement agreement provided that with "no admissions of wrongdoing and without establishing a precedent" an agreement had been reached that the letter of warning was reduced to an official discussion. The agreement further indicated that the seven-day suspension notice was reduced to a letter of warning and that appellant would receive a pay adjustment for the week of August 14 through 21, 2000 if there was no recurrence of a delay of mail. If this was accomplished by appellant then the letter of warning would be removed from his official personnel file, but if there was a recurrence then the letter would remain in his file for the contractual duration. Mr. McCall's statements and the settlement agreement establish no error or abuse by the employing establishment in issuing letters of suspension and warning to appellant. Thus, appellant has failed to establish a compensable factor of employment under the Act.

For the foregoing reasons, as appellant has not alleged any compensable factors of employment, appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty that aggravated his preexisting hypertension and

[15] *Diane C. Bernard*, 45 ECAB 223 (1993).

diabetes. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.[16]

The December 18 and March 29, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[16] *See Margaret S. Krzycki*, *supra* note 5.