U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE E. NICHOLSON and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

Docket No. 03-885; Submitted on the Record;
Issued June 26, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

On May 15, 2001 appellant, then a 53-year-old distribution operations supervisor, filed a claim for compensation alleging that he developed major depression and severe dysphonic disorder as a result of events that occurred in April 1998, September 1999, May and August 2000 and January and May 2001. He stated that he suffered from preexisting chronic depression and as a result of these adverse events, his condition escalated into major depression and dysphonic disorder. Appellant stopped work on May 11, 2001 and has not returned.

By letter dated June 18, 2001, the Office of Workers' Compensation Programs advised appellant of the type of medical and factual evidence necessary to establish his claim.

In response, appellant submitted additional medical and factual evidence, including narrative statements, in which he described a variety of incidents that purportedly contributed to his current condition. Appellant stated that his problems began on April 30, 1998, when he and a coworker were suddenly removed from their assignments at the general mail facility and transferred to the priority mail facility. He stated that without warning he was told to clean out his locker and wait for his supervisor in a corner of the cafeteria. Appellant reportedly was not allowed to return to the workroom floor to say goodbye to his longtime coworkers. He was also told that he would be watched closely and threatened with demotion if he did not perform well at the new facility. Appellant was then sent to the remote priority mail facility location, where he officially became a management outcast. Appellant stated that he felt humiliated, almost like he had been arrested and felt that he had been sent into exile. At the priority mail facility appellant allegedly had to contend with insufficient staffing and a large number of temporary employees while being constantly reminded by management that he was being "closely watched." Appellant stated that, after his transfer, his chronic depression, which he developed in 1974 after the death of his mother, began to worsen.

In September 1999, appellant returned to the general mail facility, where he accepted a supervisory position in automation. Appellant stated that he only worked in automation for a few weeks, when he was suddenly reassigned to the manual unit. At that point, he realized he would never again be treated fairly by the employing establishment.

From February 6 to April 24, 2000, appellant was absent from work following the death of his father. Shortly, after his return to work on May 2, 2000, he was called in to a "due process" interview where he was informed that his request for leave under the Family Medical Leave Act (FMLA) for his prior absence had been disapproved and that he would be reprimanded for unscheduled absences. On May 9, 2000 appellant received a letter of warning regarding his unscheduled absence. He grieved the letter of warning and as a result his FMLA leave was eventually approved and the employing establishment settled the matter, without prejudice, by removing the letter of warning from appellant's file.

Another "due process" interview was conducted on August 11, 2000 for a missed mail dispatch deadline, but after investigation of the matter, appellant was found to be without fault. Additionally, the employing establishment issued letters of warning on February 8 and May 11, 2001, for appellant having missed mail dispatch deadlines. While the employing establishment later agreed to remove the February 8, 2001 warning from appellant's file because he had not been afforded a representative at his "due process" interview, the May 11, 2001 letter of warning was upheld. Appellant stated that, after receiving his May 11, 2001 letter of warning, he was unable to continue working due to his severe depressive reaction.

In a decision dated December 7, 2001, the Office denied appellant's claim on the grounds that he failed to establish any compensable factors of employment.

Following an oral hearing, held at appellant's request, by decision dated November 18, 2002, an Office hearing representative affirmed the prior denial.

The Board finds that appellant has failed to establish that he sustained an emotional condition while in the performance of duty.

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]

[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).

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 decisions dated December 7, 2001 and November 18, 2002, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Administrative or personnel matters unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of the Act.[7] Appellant's allegations regarding disciplinary actions, denial of FMLA leave, work assignments and monitoring of work activities all fall within the category of administrative or personnel matters. Although disciplinary actions, leave requests, work assignments and the monitoring of work activities are generally related to the 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

[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).

[8] *Janet I. Jones*, *supra* note 7.

establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[9]

In this case, the employing establishment submitted comprehensive responses dated September 13, 2001 and August 28, 2002, explaining that transfers and reassignment to areas where one is needed is part of being a supervisor with the employing establishment and further explaining why appellant received each of his letters of warning. In addition, the employing establishment provided responses from appropriate personnel to each of appellant's more specific allegations.

Regarding the April 30, 1998 transfer, Bill Hodson denied that he made appellant sit in a corner of the cafeteria prior to his transfer to the priority mail facility. Mr. Hodson further stated that rather than threatening appellant with demotion, he reminded him that it was his choice to remain a supervisor and accept the transfer or to choose a voluntary reassignment back to the craft level. In response to appellant's allegation that he was threatened with being closely watched, Kirk Bateman stated that he had counseled appellant that his poor performance had been noticed by management and that if he did the best job he could in his new position, he had the chance to redeem himself and possibly obtain a position more to his liking. The Board notes that a claimant's job insecurity is not a compensable factor of employment under the Act.[10] Additionally, appellant's dissatisfaction with being "exiled" to the priority mail facility is also not a compensable factor of employment, but rather constitutes frustration from not being permitted to work in a particular environment or to hold a particular position.[11] Finally, while appellant referenced the fact while in the priority mail facility he had to deal with insufficient staffing and a large number of temporary employees, appellant did not attribute his emotional condition to these factors themselves, but rather to the fact that he was being "closely watched" under these conditions.[12]

With respect to the denied FMLA leave request and subsequent letter of warning for unscheduled absence, representatives from the employing establishment stated that appellant's request for FMLA leave was not received in a timely manner, thus resulting in the denial of his request. However, after subsequent investigation revealed that the employing establishment's delay in handling the paperwork contributed to appellant's untimely request, the letter of warning was removed from his file.

Concerning the February 8, 2001 letter of warning, Beverly L. Curry explained that appellant was disciplined for missing a mail dispatch deadline. Ms. Curry stated that, although appellant had been a supervisor for 15 years and knew the procedures, he failed to delegate the responsibility for overseeing the dispatch while he attended a regularly scheduled meeting and further did not leave the meeting to check that the dispatch was running smoothly. The

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

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

[11] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[12] *See Michael L. Malone*, 46 ECAB 957 (1995).

employing establishment subsequently removed the letter of warning from appellant's file because he did not have his representative present during his "due process" meeting.

The record also contains a response from James Stines regarding the August 10, 2000 "due process" interview. Mr. Stines stated that, because some dispatch deadlines were missed, he called appellant in for an interview. However, the investigation revealed that appellant was not at fault. Mr. Stines stated that he did not investigate the matter to discredit appellant, but rather to determine where the problem areas were. Finally, the record contains a decision upholding the May 11, 2001 letter of warning on the grounds that appellant again failed to provided coverage or otherwise ensure a timely mail dispatch, while he attended a regularly scheduled staff meeting.

Although appellant alleged that the employing establishment erred and acted abusively either in the assignment of work or in the issuance of disciplinary actions, his allegations are not supported by the record. The mere fact that personnel actions were later modified or rescinded does not, of itself, establish error or abuse.[13] In addition, a review of the evidence submitted by both appellant and the employing establishment indicates that appellant has not shown that the employing establishment's disciplinary actions, transfers or denial of leave were unreasonable. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.[14]

[13] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[14] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The November 18, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 26, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member