

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK E. RICHARDSON and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

*Docket No. 02-2182; Submitted on the Record;
Issued March 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On February 1, 2002 appellant, then a 55-year-old custodian, filed a Form CA-2 claim alleging that he sustained stress, of which he became aware on November 18, 1999 in the performance of duty.¹ The employing establishment controverted his claim. Appellant was apparently "upset by a variety of situations that he felt were discriminatory and felt powerless to change them. His feelings of anger and frustration were frightening to him because he reacted inappropriately to his anger in the past and wanted help to manage his response."

Appellant described his problems as follows:

"Cannot concentrate on anything. Try to focus, but mind races and cannot get my thoughts straight. I suffer from insomnia, so I always feel like I'm in a daze and living outside myself. Feel paranoid, like everybody is watching me, waiting for me to make a mistake. Don't feel like I am part of the group, feel isolated and shunned. They all think that I am less than them, that makes me feel belittled and like I want to make them feel pain for making me feel pain. My heart races when I[']m feeling anxious and I feel scared and like something is going to happen to me because I don't have any control over what's going on. I'm depressed when it's time to go to work, because I haven't had much sleep and know I won't be able to concentrate and won't do good. I have pain from my knees, shoulder and my chest. Some of the people at work act like they don't want to be around me and leave the area when I come around like they are scared of me. That makes

¹ This is appellant's second appeal before the Board. In the prior appeal, Docket No. 97-1537 (issued February 10, 1999), the Board determined that he had not established that he had a bilateral knee condition. The facts and circumstances of the case are presented in this prior appeal and are hereby incorporated by reference.

me angry and I don't know why they act like that. Then, I really get mad and want to hurt them because they are hurting me for no reason. I try to control myself at work, but it is hard and sometimes I think I am just going to go off and the hell with everything.

“Because I am not able to concentrate I can't do a good job. There are too many demons and jumbled up feelings going through my mind to do my job. I feel depressed and all alone and wonder why I have to be the one feeling like I do. Other people at work act like they can't help when I need something because they don't want to. They act like they don't care that I'm having all these problems. I can't do good enough to make sure the work I do is right. When I try to double check, I still get different answers and I don't know what is right.”

By letter dated February 11, 2002, the Office of Workers' Compensation Programs requested further information including a description of the employment factors appellant implicated in the causation of his emotional condition.

A report dated December 3, 1999 from Dr. Clifford C. Perera, a psychiatrist, revealed that appellant was discharged from the military with a 30 to 40 percent service-related disability due to psychiatric problems and that his complaints about coworkers and employees were that the coworkers think he is a maintenance person while he has been designated to a job behind a desk due to his physical limitations. Appellant also felt that most people around him were “white,” that they seemed to fear him because he was “black,” and that they hung up pictures of apes and gorillas. Dr. Perera diagnosed a recurrent type depressive disorder with paranoid features and a mixed personality disorder with antisocial and paranoid personality traits and he opined that appellant's mental disorders had been present for a long time prior to his being hired.² Dr. Perera opined that appellant's condition was in an exacerbation and that he was not capable of functioning in his occupation.

Appellant submitted a November 20, 2001 report from Dr. Anil M. Parlich, a Board-certified psychiatrist, which provided a lengthy list of his symptoms, noted that occasionally he heard things that were not there, that occasionally he felt paranoid and that he had a work-related physical injury of carpal tunnel syndrome. Dr. Parlich diagnosed aggravation of a bipolar disorder of a mixed type and noted that appellant got confused easily. He indicated that appellant was unable to pass a test, was told he was not an modified duty station clerk while he believed he was and significantly suffered a blow to his self-esteem and embarrassment as a result. Dr. Parlich indicated that these feelings increased appellant's anxiety about his relationship with his coworkers, which caused more rejection by his coworkers, which added to his stress level and aggravated his underlying psychiatric condition.

In a response to the Office's information request dated March 12, 2002, appellant stated that the atmosphere at the employing establishment was intimidating, challenging, emotionally abusive and painful. He alleged being treated with ridicule and made fun of through jokes and rude comments about his work performance and personal communication. Appellant alleged that a supervisor, Jay Brown, made rude and disrespectful comments to him concerning race. He

² Appellant began work with the employing establishment in 1988.

claimed that Mr. Brown called one of appellant's coworkers a "black bitch" in his presence, that Mr. Brown had a book about slavery and that it was black men who betrayed them and told the slave owners information. Appellant alleged an incident with supervisor Connie Henninger, who was supposedly demoted as a direct result of her mistreatment of him. Appellant claimed that Ms. Henninger harassed him and he spoke with employing establishment staff and she was demoted. Appellant claimed that he was made to feel not important, made fun of, dismissed as a nuisance and devalued. He also claimed that a coworker put a picture of a monkey on the wall in his area and said it was him and that another told him not to sit at her desk with his greasy chicken.

Appellant also provided information about his Equal Employment Opportunity Commission complaints and grievances regarding his chair being moved, balled up paper being thrown on his desk and locks being put on cabinets, among other things.³ He claimed that he was harassed by a supervisor about the length and duration of his smoke breaks outside and about using a passkey to get into certain offices at certain times. He alleged that he was asked if he had seen a picture of a monkey that was put up by the coffee machine in his work area by a specific person who wrote "which one do you think he is?" It had been taken down by the person asking.

Appellant also provided information in a June 29, 1998 statement about events happening in August 1997, which included him being warned to stay away from Myra King. He alleged that when Ms. King was awarded a bid, she took his things off a desk he had been using and claimed it for her own. Appellant further alleged that he had been the victim of harassment, smart remarks, negative gestures and innuendoes. He claimed that he had been left notes referring to him as "you big dummy" and that there was confusion about his position. Appellant claimed that Ms. King "shrink wrapped" her desk and chair and locked her telephone in a drawer when she went on vacation and left him a note stating that she did not want him sitting at her desk eating his greasy chicken and making a mess. Appellant claimed that Ms. King had filed a sexual harassment complaint against him.

By decision dated May 29, 2002, the Office rejected appellant's claim for an emotional condition finding that the evidence of record failed to establish that appellant sustained an emotional condition in the performance of duty. The Office found that appellant failed to implicate any compensable employment factor in the development of his emotional conditions.

The Board finds that appellant has failed to establish that he sustained an emotional condition the performance of duty, causally related to compensable factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was

³ None of these were resolved in his favor but instead were either withdrawn, settled "without prejudice" or were still pending.

sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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.⁵ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁶

Appellant did not submit sufficient factual evidence to establish the employment factors or incidents that he alleged caused or contributed to his condition. Appellant referred generally to "a variety of situations that he felt were discriminatory" without providing specifics regarding facts, date, time, place or persons involved. Appellant provided a lengthy discussion of his feelings regarding some situations, indicating that he felt powerless, unable to concentrate, unable to focus, dazed, paranoid, isolated, shunned, scared, depressed, angry and belittled.

When asked by the Office for clarification of the employment factors he alleged in the development of his condition, appellant stated that the work atmosphere was intimidating, challenging, emotionally abusive and painful. He alleged treatment with ridicule and made fun of, that people were rude to him and made jokes about him, that they made disrespectful comments to him and that they put pictures of monkeys and apes up where they could be seen and told him not to sit certain places. Appellant alleged that he was made to feel unimportant, that he was dismissed as a nuisance and devalued, that he was generally mistreated and that he was a victim of harassment, smart remarks, negative gestures and innuendoes. However, insufficient specifics of any of alleged incidents were provided and no witnesses or participants were identified.

In support of his claim of emotional disability appellant did not submit probative factual evidence, but instead merely provided his own feelings and perceptions of what happened. The Board has frequently explained that perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *Id.*

supporting the allegations with probative and reliable evidence.⁷ Appellant did not submit such probative and reliable evidence in this case.

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. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Act. When an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his or her employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁸ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁹ Noncompensable factors of employment also include administrative and personnel actions, which are matters not considered to be "in the performance of duty."¹⁰

The Board finds that appellant has not established any compensable factors of his employment in the development or aggravation of his emotional conditions.

Appellant did not allege that he developed an emotional condition arising out of his regular or specially assigned duties, or out of specific requirements imposed by his employment. He characterized many of the implicated employment factors or incidents as harassment. The Board has held that actions of an employee's supervisor or coworker, which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹¹ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹² Appellant claimed that he was harassed by Ms. Henninger, but no specifics were provided. He further claimed that an unnamed coworker put up a picture of a monkey on the wall in his work area and said it was him, which he interpreted as harassment, but this was not corroborated by other witnesses. Another coworker, Ms. King, allegedly asked appellant not to sit at her desk and eat greasy chicken, which he interpreted as harassment. However, no evidence substantiates this allegation. Appellant alleged

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *Donna Faye Cardwell*, *supra* note 5, *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Id.*

¹⁰ *See Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

¹¹ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹² *Ruthie M. Evans*, 41 ECAB 416 (1990).

that his chair was moved, that balled up paper was thrown on his desk, that locks were put on his cabinets, that a note referring to him as “you big dummy” was left where he could see it, that Ms. King shrink-wrapped her desk when she went on vacation and that she locked her telephone in a drawer, all of which he characterized as harassment. However, no substantiating or corroborating evidence that any of these things actually occurred as alleged was presented.

The Board finds that appellant has failed to submit sufficient evidence to support of his harassment allegations. Appellant has the burden of establishing a factual basis for his allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant’s employer. Accordingly, the Board finds that these allegations do not constitute compensable factors of employment since appellant has not established a factual basis for them.

Appellant alleged that he was criticized by a supervisor about the frequency and duration of his smoking breaks outside and about using a passkey to access empty offices. He characterized this as harassment, but actually these issues fall into the category of administrative or personnel actions, as supervisors are responsible for an employee’s time management, schedule and location of work assignment. In *Thomas D. McEuen*¹³ the Board held that an employee’s emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹⁴ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and, therefore, they are not compensable now under the Act.

As appellant has failed to submit any reliable and probative evidence corroborating and substantiating that any of the alleged incidents or wrongs he perceived as occurring actually happened to him, or that the employing establishment committed error or abuse in an administrative or personnel matter, the Board finds that appellant has failed to establish that any emotional condition he may have is causally related to compensable factors of his federal employment.

¹³ 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991).

¹⁴ See *Richard J. Dube*, 42 ECAB 916 (1991).

Accordingly, the May 29, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 17, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member