

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICKY D. LONG and U.S. POSTAL SERVICE,
POST OFFICE, Madisonville, KY

*Docket No. 03-1913; Submitted on the Record;
Issued October 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an emotional condition causally related to factors of his federal employment.

On June 6, 2002 appellant, then a 47-year-old window clerk, filed a notice of occupational disease alleging that he sustained major depression and anxiety as a result of being harassed at work since he was injured in 1988. On July 25, 2002 the Office of Workers' Compensation Programs received a statement from appellant, who alleged work incidents to which he attributed his emotional condition. Appellant submitted five witness statements, medical treatment notes and reports from Dr. Shirly H. Spence, a clinical psychologist, dated May 24 and August 23, 2002. The employing establishment provided a copy of appellant's job description and five statements from supervisors who dealt with appellant on his job. The record also contains investigative documents pertaining to various union grievances filed by appellant against the employing establishment.

In a decision dated August 16, 2002, the Office denied compensation on the grounds that appellant failed to establish a compensable factor of employment and, therefore, was unable to establish that he sustained an emotional condition while in the performance of duty.

On September 4, 2002 appellant requested a hearing, which was held on January 29, 2003. Appellant and his wife appeared and provided testimony with respect to his claim for compensation. In a decision dated April 23, 2003, an Office hearing representative modified the Office's August 16, 2002 decision to reflect that appellant had established compensable factors of employment involving an incident on October 22, 1999 when the postmaster grabbed him by the head. The Office hearing representative, however, determined that the medical evidence was insufficient to establish a causal relationship between the work incident and appellant's diagnosed conditions of depression and anxiety. Accordingly, benefits were denied.

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

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee 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 emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.¹

Workers' compensation law is not applicable 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 coverage 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 are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.²

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Federal Employees' Compensation 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.³ However, the Board has also held 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's superiors in dealing with the claimant.⁴ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁵

Appellant generally alleged that he was harassed on a daily basis following a work-related injury in 1988 that required him to work modified duty. He alleged verbal abuse by coworkers, who told him that he should be removed from his job since he could no longer perform regular work. He alleged that one coworker called him a son-of-a-bitch and said he needed a good ass-whipping, while another coworker asked why he didn't do his damn job. Appellant related that the postmaster, Randall Sickmeir, told appellant's wife that the best thing she could do was to encourage her husband to get a job in Evansville or some other post office. Mr. Sickmeir allegedly stated that appellant was "trouble" and should work somewhere else. Appellant's wife testified that she heard supervisors calling her husband names such as "dickhead," "dumb ass" and "son-of-a-bitch." She noted that Mr. Sickmeir often used profanity when he got mad. She also alleged that coworkers ridiculed and made fun of appellant because they felt his work restrictions prevented him from having to do anything on the job.

¹ *Claudio Vazquez*, 52 ECAB 496 (2001); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Roger Williams*, 52 ECAB 468 (2001); *Joel Parker, Sr.*, 43 ECAB 220 (1991).

³ *See Felix Flecha*, 52 ECAB 268 (2001).

⁴ *See Roger Williams*, *supra* note 2.

⁵ *James E. Norris*, 52 ECAB 93 (2000); *Ruth S. Johnson*, 46 ECAB 237 (1994).

The Board has carefully reviewed the record and finds insufficient factual evidence from which to conclude that appellant was verbally harassed, as alleged. The Board notes that the supervisory statements provided by the employing establishment denied that appellant was the victim of name-calling. To the extent that appellant's wife is an interested party with respect to appellant's claim for compensation, the Board does not find her statement, alone, to be sufficient to establish that appellant was subjected to verbal abuse.⁶

Appellant alleged that he was treated differently than the other employees and had to file grievances. He described a series of work injuries beginning in 1988 that resulted in him being issued letters of warning concerning safety expectations. He stated that in 1992 he was removed from his job for falsifying records. He explained that on the day in question he went downstairs to turn on the heat while his wife, who was a supervisor at the time, clocked him in. Appellant related that although this was a common practice, both he and his wife were fired. He noted that a grievance was filed and, after six months, he and his wife were reinstated with full back pay. In 1997, appellant received a letter of warning for not running a final tape at the end of the day. A grievance was filed and the letter of warning was reduced to an official discussion.

The Board notes that the actions of the employing establishment in undertaking disciplinary action against appellant for poor work performance and absences from work are generally not compensable. The monitoring of an employee's activities at work is an administrative matter, unrelated to the employee's regular or specially assigned-work duties and does not fall within the coverage of the Act unless the evidence discloses error or abuse by the employing establishment.⁷ The mere fact that a grievance was resolved by the disciplinary action being removed from appellant's record, does not in and of itself show that the actions of the employing establishment were erroneous.⁸

Appellant related that prior to his 1988 work injury he had been appointed as an acting supervisor for intermittent periods of time. Following the injury, however, he was allegedly told by his supervisor that he would not be allowed to act as a supervisor again and that he would not "get a goddamn thing" as long as he was in that office. He alleged that his supervisor denied several requests he made to have Saturday as his day off without any reasonable explanation for the denial. The Board finds, however, that an employee's emotional reaction based on his desire to hold a different position is considered as self-generated.⁹ As such, it is not compensable in the absence of error or abuse on behalf of the employing establishment. The record does not establish such error or abuse. There is insufficient evidence to support that the employing establishment denied appellant's request to be made a supervisor so as a form of punishment for him having sustained a work injury. Similarly, the Board finds that the employing establishment had discretion to deny appellant's request for Saturday leave as a part of its administrative practice. Emotional conditions arising from actions taken by the employing establishment in personnel matters, such as the denial of leave or the assignment of a work schedule, are not

⁶ The Board notes that appellant's wife did not indicate that appellant heard any of the alleged profane remarks or that he was verbally abused on a daily basis as alleged.

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001); *see also James E. Norris*, 52 ECAB 93 (2000).

⁸ *See Dennis J. Balogh*, *supra* note 7.

⁹ *Ronald C. Hand*, 49 ECAB 113 (1997).

compensable factors of employment under the Act when there is no evidence that the employing establishment acted unreasonably.¹⁰

Appellant alleges that he was harassed by postal inspectors who fingered him for an incident where panties and a condom were placed in a parked car. He related that no charges were brought against him and that the postmaster was eventually fired. Injuries sustained during investigations into alleged illegal or improper acts are not within the performance of duty. Although the employing establishment's investigation of employee conduct is generally related to appellant's employment, it actually concerns the administrative functions of the employer and not appellant's regular or specially assigned duties.¹¹ In the absence of factual evidence of record to establish that appellant was singled out for the investigation or that the employer was in error or abusive in the manner the investigation was conducted, the Board finds that the investigation is not a compensable factor of employment.

Appellant contends that he was improperly written up for missing too much time from work when his absences should have been excused based on the fact that he was seeking medical treatment for work-related injuries. Appellant related that in 2002 he sustained an injury when a customer threw some stamps at him, injuring his eyeball. He indicated that the physicians kept having him return to check on the eye, but he received a write up from his supervisor for missing too much time from work. He related that in May 2002 he bumped his arm at work and got a small scratch. Appellant contends that he was forced by his supervisor to seek medical attention from a physician who only made fun of him for wanting treatment. He related that upon his return to work, the postmaster told him that he was tired of appellant getting injured at work. Appellant was later called into a meeting and a heated discussion ensued regarding appellant's capacity to perform his job. Appellant alleges that he was threatened with a write up if he attended a scheduled doctor's appointment and was told that he should transfer to another duty station.

In a letter dated August 5, 2002, Steven Bryant, a supervisor, maintained that appellant was observed by surveillance camera on May 1 and 2, 2002 being away from his assigned work area. Mr. Bryant decided to transfer appellant to another work assignment but that appellant did not want to be transferred and threatened that he would probably have an accident while working at the new assignment. Mr. Bryant did not consider the new job assignment to be outside of appellant's work restrictions and told him at a meeting with a union representative that he had a direct order to discharge his duties in a safe and efficient manner. Appellant was also informed that employees with limited-duty work restrictions may be subject to transfer to a different duty station in order to better accommodate the needs of the employing establishment and the physical limitations of the employees.

The Board finds no error or abuse by appellant's supervisor in requiring that appellant seek medical attention for the scratch on his arm. It is an administrative function of the employer to apply safeguards in the workplace. The Board also finds no factual support for appellant's contention that he was improperly denied sick leave to attend medical appointments. The employing establishment reinstated appellant's back pay for absences from work on those

¹⁰ See generally *Joel Parker, Sr.*, *supra* note 2.

¹¹ *Drew A. Weissmuller*, 43 ECAB 745 (1992).

occasions when he provided updated medical documentation for his medical appointments. Because there is no evidence that the employing establishment acted unreasonably in requesting medical documentation for work absences, the Board finds that appellant failed to establish a compensable factor of employment. Again, the fact that certain warning letters were later rescinded or that appellant was granted sick leave following a grievance procedure does not, in and of itself, show error or abuse by the employing establishment.¹²

Although appellant submitted coworker statements indicating that certain supervisors were encouraging appellant to go on permanent disability, the witness statements do not establish that the alleged actions of the supervisors were in error. Appellant's perception that he was being forced from his job or that he was the victim of a harassment campaign designed to get him out of his duty station is not compensable. Disabling conditions resulting from an employee's feeling of job insecurity do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.¹³ In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties.¹⁴

The Board notes that the Office accepted that appellant established a compensable factor of employment with respect to an October 22, 1999 work incident, in which Mr. Sickmeir grabbed appellant by his head and told him to keep his mind on the job and quit talking about the stock market. The record establishes that as a result of a grievance filed by appellant, Mr. Sickmeir was found in violation of the employing establishment's policy on workplace violence and received a seven-day suspension for improper conduct. The Board has recognized that physical contact by a supervisor may support a claim for an emotional condition if it is substantiated by the factual evidence of record and the medical evidence establishes that the emotional condition was caused or aggravated by that physical conduct.¹⁵ Because the record establishes that Mr. Sickmeir grabbed appellant by the head in an inappropriate manner, the Board will evaluate the medical evidence on the issue of causal relationship.

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the employee.¹⁶

The Board notes that appellant did not seek treatment for an emotional condition until May 6, 2002, over two years following the October 22, 1999 work incident. In her initial

¹² See *Dennis J. Balogh*, *supra* note 7.

¹³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁴ *Id.*

¹⁵ See *Alton L. White*, 42 ECAB 666 (1991).

¹⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

treatment note dated May 6, 2002, Dr. Spence diagnosed depression and anxiety due to people laughing at appellant on the job and his fear that he was going to lose his job. She discussed the incident involving the scratch on appellant's arm but she did not address the October 22, 1999 incident with Mr. Sickmeir grabbing appellant's head. In an attending physician's report dated May 24, 2002, Dr. Spence diagnosed that appellant suffered from depression and anxiety "due to his perception of his treatment and interactions following his neck injury." She stated in an August 23, 2002 report that one of the issues of concern was appellant's description of being "accosted or assaulted by the postmaster." Dr. Spence, however, did not address the accepted incident in any detail in her report or otherwise offer an opinion as to how that incident resulted in appellant's depression and anxiety. For the most part, Dr. Spence related appellant's opinion of the source of his emotional problems. She did not provide a reasoned opinion, based on factual and medical rationale, as to the causal relationship between the October 22, 1999 work incident and appellant's depression and anxiety disorder. Although Dr. Spence noted many of the allegations raised by appellant as contributing to his mental state, those factors are not established as compensable factors to be considered in determining whether appellant's emotional condition arose in the performance of duty. As Dr. Spence did not provide a reasoned opinion that attributed appellant's emotional condition to the October 22, 1999 work incident, the Board finds that appellant failed to satisfy his burden of proof.¹⁷ The Board concludes that the Office properly denied compensation.

The decision of the Office of Workers' Compensation Programs dated April 23, 2003 is hereby affirmed.

Dated, Washington, DC
October 20, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁷ See generally *Isabel R. Pumpido*, 51 ECAB 326 (2000); *Id.*