

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. VICTOR and U.S. POSTAL SERVICE,
POST OFFICE, Schaumburg, IL

*Docket No. 03-1357; Submitted on the Record;
Issued September 12, 2003*

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On December 19, 2001 appellant, then a 50-year-old postmaster, filed an occupational disease claim alleging that as a result of constant increasing pressure at work and hostile and discriminatory treatment by his superiors, he suffered a major depressive disorder and a heart attack with complications. Appellant stopped work on July 17, 2000 and had not returned by January 7, 2002. In support of his claim, appellant submitted a medical report from Dr. Robert A. Green, Ph.D., who diagnosed a major depressive disorder. Appellant also submitted a number of personal statements, copies of emails and other documentation, in which he specifically alleged that management responses to an October 1995 "end of run" report, which was issued with fictitious names and a January 1997 fictitious "newsbreak" were inappropriate and that, in June 2000, he received a cartoon depiction of a naked man.¹ Appellant further alleged that in December 1998, when he requested permission to replace an office manager who had retired, he was singled out and subjected to a managerial review. He also took issue that the word "draconian" was used in a December 1999 memorandum from George S. Kikuchi, the new district manager, which appellant perceived to be a threat and that Raymond P. Janicek, safety manager, disparagingly referred to appellant in a February 2000 email. Finally, appellant alleged that he was treated in a hostile manner during meetings with Mr. Kikuchi on April 21 and May 31, 2000 and generally alleged that he was subject to hostile and discriminatory treatment by his superiors at the employing establishment. The employing establishment controverted the claim.

By letters dated January 15, 2001, the Office of Workers' Compensation Programs requested that both the employing establishment and appellant furnish additional information,

¹ The "end of run" report included the names "Anita Grabmore" and "Howie Fondlezor" the "newsbreak" was a fictitious, humorous depiction regarding a coworker and the cartoon depicted a man with his head in his anus.

specifically informing appellant of the type evidence needed to support his claim. He thereafter submitted additional medical evidence and the employing establishment provided a statement, in which A.B. Perchorowicz, (a.k.a. "Skip Perch"), manager of post office operations, specifically contradicted appellant's allegations.

In a decision dated April 29, 2002, the Office denied appellant's claim on the grounds that he failed to establish fact of injury. On May 20, 2002 appellant, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated August 20, 2002, the Office modified the prior decision to indicate that appellant failed to establish that he sustained an emotional condition in the performance of duty. In a September 12, 2002 decision, the Office provided further explanation and again denied the claim on the grounds that appellant failed to establish that he sustained an emotional condition in the performance of duty. The instant appeal follows.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition or a stress-related cardiac condition in the performance of duty causally related to factors of employment.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; 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. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁵ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁶

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3.

Administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.⁷ Where disability results from an employee's emotional reaction to certain administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, the disability does not fall within coverage of the Act.⁸ However, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰

Thus, in regard to appellant's allegation that, in December 1998, when he requested permission to replace an office manager who had retired, he was subjected to an improper managerial review, Mr. Perchorowicz indicated that at that time the employing establishment was undergoing reorganization with new guidelines established regarding staffing needs and that, contrary to appellant's allegation that he was singled out, staffing levels at other locations were also reviewed. The Board, therefore, finds that appellant's frustration with the December 1998 review and policies and procedures of the employing establishment and disagreement with reorganization of the employing establishment¹¹ are administrative functions of the employer and not duties of the employee and there is no evidence of record to indicate that the employing establishment erred or acted abusively. Appellant, therefore, failed to establish a compensable factor of employment in this regard to these administrative actions of the employing establishment.

Regarding appellant's contention that he was treated in a hostile manner in meetings with Mr. Kikuchi in April and May 2000 and his general contention that he was treated in a hostile and discriminatory way by his superiors at the employing establishment, to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹² However, 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.¹³ In the present case, appellant submitted no corroborating evidence regarding the April and May 2000 meetings or his general allegation that he was subject to hostile treatment. As stated previously, Mr. Perchorowicz provided a statement and countered each of appellant's allegations.

⁷ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁸ *Michael L. Malone*, 46 ECAB 957 (1995).

⁹ *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ *Mary Margaret Grant*, 48 ECAB 696 (1997).

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Roger Williams*, 52 ECAB 468 (2001).

A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent objective evidence that the interaction was, in fact, abusive. This principle recognizes that a supervisor or management in general must be allowed to perform their duties and that, in performing their duties, employees will at times dislike actions taken but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent error or abuse.¹⁴ A claim based on verbal altercations or a difficult relationship with a supervisor must be supported by the record¹⁵ and a claimant's burden of proof is not discharged by the fact that the employee has identified some employment factors. The Board, therefore, finds that appellant did not establish harassment and/or discrimination on the part of the employing establishment. Furthermore, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁶ The Board, therefore, finds that appellant did not establish harassment and/or discrimination on the part of the employing establishment.¹⁷ The Board has also held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable under the Act.¹⁸

Regarding appellant's contentions concerning the 1995 "end of run" report, the record contains an employing establishment memorandum dated November 14, 1995, in which Mary Alexander, plant manager, advised that the incident was investigated, the person responsible identified and appropriate action taken. Ms. Alexander further indicated that such behavior would not be tolerated. Likewise, regarding the January 1997 "newsbreak," Mr. Perchorowicz advised that the newsbreak was not authorized and that the individual responsible had received correction action. The Board, therefore, finds that, while these events occurred, the employing establishment acted reasonably and appropriately. Thus, as these events do not indicate that the employing establishment acted abusively, appellant failed to establish that these were compensable factors of employment. Likewise, regarding the picture, the record indicates that this was sent to 20 plus individuals and, while the Board finds it inappropriate, appellant was not singled out and the employing establishment, as reported by Mr. Perchorowicz, acted in an appropriate manner by reprimanding the sender. Thus, the Board finds no evidence of error or abuse on the part of the employing establishment and appellant failed to establish a compensable employment factor in this regard.

¹⁴ *Daniel B. Arroyo*, 48 ECAB 204 (1996).

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

¹⁶ *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁷ The Board notes that appellant's attorney advised that appellant had filed four complaints with the Equal Employment Opportunity Commission. The record, however, contains no further evidence regarding these complaints.

¹⁸ *See Michael Thomas Plante*, *supra* note 16.

Appellant also perceived Mr. Kikuchi's use of the word "draconian" in a December 1999 email to be a threat. The record, however, indicates that Mr. Kikuchi's concern, as supported by Mr. Perchorowicz, was in getting operations in control and the email was for general distribution. The Board, therefore, finds that this did not constitute a personal threat to appellant and he failed to establish a compensation factor of employment in this regard.

Finally, with regard to the February 12, 2000 email, circulated by Mr. Janicek. As safety manager, Mr. Janicek could assess appellant's compliance with a safety program¹⁹ and the February 12, 2000 email indicates that he reviewed appellant's request for additional personnel and performance at his branch, in contrast with other supervisors in the area. The Board finds that this does not rise to the level of being abusive or harassing of appellant.²⁰ Appellant, therefore, did not establish a compensable employment factor in this regard.

In conclusion, the Board finds that appellant did not meet his burden of proof in establishing that he sustained an emotional condition in the performance of duty as alleged.²¹

The decision of the Office of Workers' Compensation Programs dated September 12, 2002 is hereby affirmed.

Dated, Washington, DC
September 12, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁹ The email was in regard to a safety auditing program called PEG, which was implemented in December 1999.

²⁰ *Roger Williams, supra* note 13.

²¹ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).