United States Department of Labor
Employees' Compensation Appeals Board

SCOTT A. EADES, Appellant	)	
and	)	**Docket No. 04-374**
	)	**Issued: April 29, 2004**
U.S. POSTAL SERVICE, RICHLAND STATION, Dallas, TX, Employer	)	

Appearances:
Scott A. Eades, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 28, 2003 appellant filed a timely appeal from the October 8 and March 13, 2003 decisions of the Office of Workers' Compensation Programs which denied his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On September 6, 2002 appellant, then a 38-year-old letter carrier, filed a claim alleging that he sustained an emotional condition as a result of his federal employment. A union steward, appellant alleged that beginning about 1999 supervisors singled him out and retaliated against him for Equal Employment Opportunity (EEO) and grievance filings. His allegations included the following: he received letters of warning that were unjust and written to have him punished

and ultimately fired; on January 22, 2002 Supervisor Richard Knight made sexual physical contact with him and nothing was done when he reported it; on February 28, 2002 Supervisor Delwin Henderson falsified the parcel count and, to cover it up, issued appellant a letter of warning with a suspension; Supervisor Henderson assigned the easy part of appellant's route to a buddy; exit doors were chain locked and appellant was instructed to exit through the entrance, in violation of safety procedures; after reporting Supervisor Vickie L. Burnett for delaying mail and asking questions about insured parcels not delivered on her tour, appellant was accused of taking a swing at Supervisor Knight; on March 5, 2002 Supervisor Knight sneaked up behind appellant, startled him, exchanged words with him and stated that he wished that appellant would hit him so he could get rid of him that day; Supervisor Knight reported to Supervisor Henderson that appellant took a swing at him, for which appellant was put off the clock and held in a nonpay status; Supervisor Knight wrote a statement on the matter based on false allegations and half-truths; appellant filed a grievance and it was resolved that "management should have quickly determined there was no support" for Supervisor Knight's allegations; on April 2, 2002 appellant received a notice of removal, effective May 10, 2002, that was comprised of false statements; the union contract provided that he should have received a 30-day suspension instead; after appellant filed a grievance on the matter and management put him back on a nonpay status, the Step B decision found that "management is incorrect in keeping grievant in a [nonpay] status" and that the "grievance should have been resolved at lowest level"; on May 13, 2002 appellant was instructed to see a psychiatrist for a fitness-for-duty examination; acting area manager Yolunda Francis was confrontational and badgering; on May 24, 2002 appellant was found unfit for duty; Supervisor Henderson wrote a letter threatening to fire appellant on July 1, 2002; appellant was released to duty on July 26, 2002; once he returned to his new route, Supervisors Henderson, Knight and Burnett again badgered, pushed and bullied appellant, who once felt singled out and in fear of his job; appellant was brought into the office four times in three days "for what I don't know;" James M. French, manager of customer services, did not follow the union contract as it was written and appellant could not continue at the employing establishment due to the undue stress and harassment by his supervisors.

In a letter dated September 7, 2002, Mr. French addressed appellant's allegations. He described appellant's conduct and the actions taken in response. Mr. French stated: "Due to procedural mistakes made during the processing of the [April 2, 2002] removal letter, management was advised by our labor relations department to withdraw the removal action…." On May 14, 2002 management rescinded this letter of removal. Mr. French noted that appellant continued to be disruptive, making loud and inappropriate comments and displaying poor work habits. He alleged that appellant was not a victim of management, but rather it was management that was subjected to his constant obnoxious verbal tyranny and abusive behavior.

The record contains a November 8, 2001 Step A grievance form relating to a letter of warning on October 9, 2001. The grievance was resolved as follows: "Letter of warning is rescinded." The record also contains a February 19, 2002 Step A grievance form relating to a letter of warning on January 19, 2002. The grievance was resolved as follows: "Letter of warning will be rescinded."

The record contains a May 22, 2002 Step B grievance decision relating to an emergency suspension on March 5, 2002. The decision found that appellant's grievance had merit, noting that, while it was reasonable for management initially to place him on an emergency suspension,

"they should have quickly determined that there was no support to their contentions of an immediate threat of assault and no reason to keep appellant on emergency capacity beyond the initial review of the incident." The decision noted that management must perform a complete investigation to determine if a dangerous situation exists and found that management's investigation was minimal.

The record also contains a June 3, 2002 Step B grievance decision relating to a letter of removal on April 2, 2002. Because management rescinded the letter of removal prior to appealing to the Step B Team, the decision found that there was no removal and appellant was to return to duty and be made whole. The decision explained, however, that, prior to the issuance of the removal letter, he was placed in an emergency suspension status. Management contended that, although it rescinded the letter of removal, the emergency suspension was still active. The decision stated: "Management is incorrect in keeping the grievant in an [emergency suspension]. Once the removal [letter] is issued the grievant is no longer in an [emergency suspension] status but in a 30-day advance written notice [status]. During the notice period management can either keep the grievant on the job or on the clock (administrative leave) at their option."

In a decision dated March 13, 2003, the Office denied appellant's claim, finding that he did not establish a factual basis for his allegations with specific, substantive or probative evidence.

On or about July 16, 2003 appellant requested reconsideration. He submitted additional statements, including a letter disputing statements made by Mr. French.

The record shows that a grievance was settled on October 16, 1997. The record also shows that an EEO complaint was resolved by a settlement agreement on March 31, 2000; by its terms a "complete and final settlement of the subject matter and without prejudice to the position of the parties in any other case and with the understanding that it will not be cited in other proceedings."

A May 22, 2002 Step B grievance decision relating to overtime work found that appellant's grievance had merit and that management should have worked carriers on the overtime desired list up to 12 hours before forcing nonlist carriers to work off their assignments. The decision instructed management to pay appellant for 1 hour and 15 minutes at the overtime rate.

On May 24, 2002 Paul L. Anderson, a coworker, alleged that Supervisor Knight lied on his statement that Art Williams was present at the time of the March 5, 2002 incident, when postal police escorted appellant from the premises. Mr. Anderson stated that he was the only employee on the workroom floor at that time, other than Supervisor Knight. One witness statement supported that Supervisor Knight crowded appellant on several occasions, that appellant politely asked him to move back out of the case, but that Supervisor Knight continued to press into appellant's personal space. Another witness statement supported that Supervisor Knight confronted appellant on June 8, 2001 about being on the workroom floor. The witness stated that he singled out appellant.

A January 24, 2003 Step B grievance decision relating to a seven-day suspension found that the suspension would be reduced to a letter of warning because the union had proved that discipline was not progressive.

On March 28, 2003 Dr. Eduardo M. Wilkerson, a Board-certified specialist in internal medicine, reported that "work-related issues" had aggravated appellant's hypertension since his first visit in October 2001. He stated: "With regard to his depression, insomnia and fatigue, from what I obtain in talking with him, has been caused and further aggravated by work-related stresses." Appellant also submitted reports from licensed professional counselors.

In a decision dated October 8, 2003, the Office reviewed the merits of appellant's claim and denied modification of the March 13, 2003 decision. The Office found that appellant had not established a compensable factor of employment.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty.[1] The phrase "sustained while in the performance of his duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[2] "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his employer's business, at a place where he may reasonably be expected to be in connection with his employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is insufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[3]

As the Board observed in the case of *Lillian Cutler*,[4] however, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his 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 resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work. By contrast, there are disabilities having some kind of causal connection with the employment that are not

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[4] 28 ECAB 125 (1976).

covered under workers' compensation law because they are not found to have arisen out of employment, such as, when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

ANALYSIS

Appellant attributed his emotional condition to the actions of his supervisors and managers. As workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment personnel.[5] Appellant has made a number of allegations of error or abuse by his supervisors and managers.

As a general rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[6] In *Kathleen D. Walker*,[7] the Board held that a claimant's unfounded perceptions could not constitute a compensable factor of employment. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[8]

The Board has held that, in claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his allegations of "harassment" or a difficult working relationship. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived "harassment," abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act. Based on the evidence submitted by the claimant and the employing establishment, the Office is then required to make factual findings which the Board can review. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[9]

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[5] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[6] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[7] *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[8] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[9] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

Having reviewed the evidence in this case, the Board finds that the record contains insufficient evidence to establish appellant's allegations of retaliation, sexual harassment, falsified statements, badgering and bullying.[10] These allegations are based primarily on his perception of the motives and intent of his superiors, which are not established as fact. The employing establishment addressed appellant's allegations with evidence that disagreed with his allegations. Step A grievance forms dated November 8, 2001 and February 19, 2002, showing grievances resolved by rescinding letters of warning, contain no admission of error by appellant's superiors in the issuance of those letters.[11] Similarly, evidence of a settled grievance on October 16, 1997 and a settled EEO complaint on March 31, 2000 does not prove appellant's allegations undergoing the grievance or EEO complaint. Mr. Anderson's May 24, 2002 statement merely raises a question about whether Mr. Williams was present at the time of the March 5, 2002 incident; it does not establish the fact that Mr. Knight lied about the matter. Other statements that Mr. Knight "crowded" appellant on several occasions, pressed into his "personal space" or singled out appellant are insufficiently detailed to establish error or abuse as a matter of fact or that Mr. Knight had contact with appellant of a sexual nature.

Appellant's claim, however, is not based wholly his perceptions. The Board finds that he has substantiated some of his allegations regarding error or abuse with probative evidence. In a September 7, 2002 statement, Mr. French acknowledged procedural errors were made in the processing of the April 2, 2002 letter of removal, which was rescinded. Further, the June 3, 2002 Step B grievance decision found that management was "incorrect" in keeping appellant in an emergency suspension status after issuing and rescinding this letter of warning. This evidence establishes two errors by appellant's superiors in these administrative and personnel matters.

The Step B grievance decisions establish three additional errors by management. The May 22, 2002 Step B grievance decision, relating to an emergency suspension on May 5, 2002 found that appellant's grievance had merit, as management had conducted only a minimal investigation and should have quickly determined that there was no reason to keep him in an emergency suspension status beyond the initial review of the incident. Another May 22, 2002 Step B grievance decision, relating to overtime work, also found that appellant's grievance had merit, as management should have worked him up to 12 hours before forcing nonlist carriers to work off of their assignments. Finally, a January 24, 2003 Step B grievance decision relating to a seven-day suspension, found that the union had proved that the discipline was not progressive and, therefore, reduced the suspension to a letter of warning.

Although an emotional reaction to an administrative or personnel action is not generally covered by workers' compensation, appellant has established error by management in these administrative or personnel matters that bring his claim within the exception to the general rule. He has established that his claimed injury arose "in the course of employment." However, to be entitled to compensation benefits appellant must also establish a causal connection between these

[10] The record also contains insufficient evidence to establish that exit doors were chain locked, that appellant was instructed to exit through an entrance and that this constituted a violation of safety procedures.

[11] *Michael Thomas Plante*, 44 ECAB 510 (1993) (the mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment).

compensable factors of employment and his diagnosed emotional condition. He must establish that he sustained an injury "arising out of the employment."[12]

Causal relationship is a medical issue[13] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incidents or factors of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[14] must be one of reasonable medical certainty[15] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incidents or factors of employment.[16]

The record in this case contains no such medical opinion. Appellant submitted reports from licensed professional counselors, but these counselors are not "physicians" as defined under the Act. Section 8101(2) of the Act states in relevant part: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."[17] The Board has held that a licensed professional counselor is not a "physician" and is, therefore, not competent to render a medical opinion.[18]

Appellant also submitted a March 28, 2003 report from Dr. Wilkerson, a Board-certified specialist in internal medicine, who reported that "work-related issues" had aggravated appellant's hypertension since his first visit in October 2001. Further, he stated that, "from what I obtain in talking with him," work-related stresses had caused and further aggravated appellant's depression, insomnia and fatigue. This opinion is of diminished probative value because Dr. Wilkerson's description of "work-related issues" is vague.[19] He did not identify the specific errors by management that are established as compensable factors of employment: (1) the procedural mistakes made during the processing of the April 2, 2002 letter of removal; (2) keeping appellant in an emergency suspension status after issuing and rescinding the April 2, 2002 letter of warning; (3) keeping appellant in an emergency suspension status after March 5, 2002, when management should have quickly determined there was no support for the contention that there was an immediate threat of assault; (4) failure to work appellant on the overtime

[12] *See supra* text accompanying note 3.

[13] *Mary J. Briggs*, 37 ECAB 578 (1986).

[14] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[15] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[16] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[17] 5 U.S.C. § 8101(2).

[18] *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

[19] *See Kathrine W. Brown*, 10 ECAB 618, 620 (1959) (finding that a medical report was insufficient to establish causal relationship because it did not contain a recital of the actual circumstances upon which the physician predicated his opinion that "job insecurity" could have been the cause of an ulcer).

desired list up to 12 hours before forcing nonlist carriers to work off of their assignments; and (5) issuing a seven-day suspension without progressive discipline. Dr. Wilkerson gave no indication that he was familiar with these aspects of appellant's work in forming his opinion on causal relationship. The Board has held that medical conclusions based on inaccurate or incomplete histories are of little probative value.[20]

Dr. Wilkerson's opinion is diminished in that it contains no medical reasoning to show that his conclusion is medically sound. When he prefaced his opinion "from what I obtain in talking with him," he indicated that a causal relationship existed according to appellant. For his opinion to carry probative weight, Dr. Wilkerson must explain how appellant's history and complaints and clinical findings establish to a reasonable degree of medical certainty that the specific managerial errors established in this case caused or aggravated the diagnosed condition.[21] In the absence of such an opinion, appellant has not met his burden of proof to establish the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty. While the evidence is sufficient to establish as factual certain errors by management in administrative or personnel matters, the medical evidence fails to establish that these factors of employment caused or aggravated appellant's diagnosed condition.

[20] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

[21] *See Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background).

ORDER

IT IS HEREBY ORDERED THAT the October 8 and March 13, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member