United States Department of Labor
Employees' Compensation Appeals Board

LOUIS A. CARMON, Appellant	)	
and	)	**Docket No. 04-479**
	)	**Issued: April 27, 2004**
U.S. POSTAL SERVICE, FOREST HILLS STATION, Tampa, FL, Employer	)	

Appearances:
Dean T. Albrecht, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 15, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 11, 2003, denying 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 established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 17, 2002 appellant, then a 55-year-old letter carrier, filed a claim for compensation alleging that, on that date, he sustained an emotional breakdown due to the efforts at the employing establishment to force him into retirement. Appellant stopped work on June 17, 2002 and has not returned.

In a June 19, 2002 narrative statement, appellant described the events which led to his emotional condition. Appellant noted that he was eligible for retirement and felt that the employing establishment had been taken actions against him in order to force him to retire. Appellant explained that throughout his 30-year career as a letter carrier it had been common practice for management to conduct periodic route evaluations by following the carrier in a separate vehicle. He alleged that, six times during the prior three months, a supervisor had ridden with him inside his postal vehicle, looking over his shoulder and watching him every minute. He stated that all the postal routes had been recently readjusted, and that his route had increased from 278 stops to 619 stops. Appellant explained that his prior route had taken him approximately six and one-half hours to complete and that his new route was to be completed in eight hours, despite being more than twice the size. He alleged that the employing establishment anticipated that the route readjustment would increase stress among employees and sent a representative from the Employee Assistance Program to speak to the employees about the recent changes.

When they learned of being assigned to new routes, all letter carriers were to be accompanied on their new routes by route examiners. Appellant asked his immediate supervisor, Duane Allen, not to pair him with Sandy Bebbington. Appellant feared Ms. Bebbington because, during the prior April, she had accompanied him on his route during which time he had failed to deliver some mail. Ms. Bebbington had reported this failure and appellant received a letter of warning, which he accepted. Appellant stated that, despite his request, he was again paired with Ms. Bebbington, and his supervisor simply told him not to worry about any kind of reprisal. On June 17, 2002, while Ms. Bebbington was accompanying appellant on his route, she asked him to remove his watch from the dashboard and put it away. When he asked why, she again instructed him to remove it, saying that he might start to "pace himself." When he questioned her instruction and again asked her why he could not have a watch on the dashboard, she replied that he could wear a wrist watch, but not have a watch on the dashboard. Appellant asserted that this was a ludicrous rule and indicated to him that the employing establishment was out to get him, as he had kept his watch on the dashboard for 20 years and no one had ever said anything to him about it, including Ms. Bebbington, when she had previously ridden with him. Appellant stated that he lost control and burst into tears and asked Ms. Bebbington why the employing establishment was trying to force him out when he had been a loyal employee for 30 years. Appellant alleged that she replied to him, somewhat sarcastically, that she was just doing her job. Appellant told her that he could not take it any more and returned to the station, where he asked a union representative, John Watts, to assist him in making a doctor's appointment and to complete appropriate compensation forms. He alleged that, while he was doing this, he overheard the station manager, Kevin Augustine, say to Mr. Watts, in a laughing tone, "What do you think, John - 45 days?" Appellant noted that it hurt him to know that the supervisors were so uncaring as to make such a comment.

In support of his claim, appellant submitted medical treatment notes from Dr. Walter E. Afield, a Board-certified psychiatrist, who diagnosed major depressive reaction and acute anxiety, causally related to appellant's employment.

Appellant submitted an undated statement from Mr. Watts, the union representative, who confirmed that earlier in the year, for approximately a two-week period, route inspectors

conducted inspections of all the postal routes to see if they were out of adjustment. Every time a carrier was not doing their job properly they would be taken into the office for an official discussion and be disciplined. Mr. Watts stated that this occurred with approximately 10 carriers and that he felt it amounted to harassment. Mr. Watts confirmed that, during this period, Ms. Bebbington had ridden on appellant's route and had made him nervous by making comments about his lack of speed and efficiency, which caused him to fail to deliver some of the mail. Mr. Watts confirmed that all the carriers' routes which were under eight hours had been adjusted effective June 15, 2002, and that appellant's route had been adjusted from 281 stops, which he accomplished in 6 hours and 37 minutes, to 641 stops.[1] The union filed grievances regarding the route increases, contending that the routes were supposed to be adjusted to take 8 hours a day, but instead were all taking between 10 and 13 hours. Since the new routes went into effect, two letter carriers had resigned and three were out on stress. On June 17, 2002 appellant approached Mr. Watts in tears, stating that he could not take it any more and asked for assistance finding a physician he could see immediately. When appellant left his office to seek medical attention, both Mr. Augustine and Mr. Allen came to him and stated, "What do you think, John, 45 days?" meaning that they knew appellant would be off work on stress-related leave for at least that amount of time.

The employing establishment submitted a June 17, 2002 narrative statement from Ms. Bebbington, who noted that on that date she had accompanied appellant on his route for a day of street observation. Ms. Bebbington stated that, as they were getting ready to go, Mr. Watts reminded appellant that to make sure to backtrack if he missed anything, alluding to the previous mid-April route inspection during which appellant had failed to deliver some mail. When appellant expressed concern about the April route inspection, she told him that it was a new day and the prior incident was over. While appellant was loading his vehicle, she noticed he had not cased the spurs into his case, as he had done previously, and was handling each as an individual parcel. When she asked him about it, he responded that he was just trying to get on the street faster because she was accompanying him. After they were on the road, Ms. Bebbington noticed that appellant was not slowing his vehicle as they approached a red light, so she screamed "Red Light!" She stated that appellant slammed on his breaks and the vehicle slid into the intersection. Afterwards, appellant told her that he did not know what he had been thinking and asked if she was alright. Later, upon returning to the vehicle from delivering mail to a stop, appellant opened the back of the vehicle and crawled all the way in to retrieve his cooler, which contained his water bottle. When Ms. Bebbington asked appellant why he did not keep his cooler up front where he could reach it, he stated that there was no room. A few minutes later, she observed appellant use a rubber band to tie a digital clock to the light knob on the dashboard, obstructing use of the knob. She asked appellant to remove it and place it in his pocket, explaining that it was a safety hazard as it would distract him while he was driving and could also make the lights inoperable. Ms. Bebbington stated that appellant questioned this, noting that regular cars had clocks on the dashboard. When she insisted that he remove the clock, he started screaming at her that he could not take it any more, and asked if she was happy she had brought a grown man to tears. Ms. Bebbington explained to appellant that she was just trying to do her job, but appellant was inconsolable and drove back to the station.

[1] While there is some discrepancy in the record as to the actual number of stops in appellant's route, both before and after the increase, it undisputed that his route was increased by approximately 350 stops.

The record also contains a June 19, 2002 statement from Mr. Augustine, manager of customer service, who noted that management had never stated, done, or implied anything that would give appellant the impression that they were trying to force him to retire. Mr. Augustine confirmed that appellant had been given a letter of warning in mid-April 2002 for failing to deliver mail, and had to be given instructions about the proper performance of his duties on several occasions, despite his 30 years of experience. Mr. Augustine stated that appellant had also been referred to the Employee Assistance Program because he made repeated claims of nervousness, failed to deliver the mail and delivered mail to the wrong addresses. On June 13, 2002 all the carriers were informed that a route examiner would accompany them the following week. On June 17, 2002, the day of appellant's route inspection, there was no indication of any problem until Supervisor Bebbington called in to say they were returning to the station. Mr. Augustine reiterated Ms. Bebbington's description of the morning's events, and noted that, upon appellant's return, prior to his asking for medical assistance, Mr. Watts arranged for appellant to obtain immediate medical attention.

In a decision dated August 21, 2002, the Office denied appellant's claim on the grounds that he failed to establish a compensable factor of employment.

Appellant requested an oral hearing, which was held on June 17, 2003, at which he reiterated his earlier assertions and added that the employing establishment had acted unreasonably in requiring a route inspection on the second day of the new route scheme, rather than allowing the carriers a six-week transition period.

In a decision dated September 11, 2003, an Office hearing representative affirmed the Office's prior decision.

LEGAL PRECEDENT

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 is deemed compensable.[2] 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.[3]

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.[4] This burden includes the submission of a detailed

[2] *Roger Williams*, 52 ECAB 468 (2001).

[3] *Id.*; *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Carolyn S. Philpott*, 51 ECAB 175 (1999).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[5]

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.[6] 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.[7]

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions, the majority of which occurred on June 17, 2002. By decisions dated August 21, 2002 and September 11, 2003, 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 Federal Employees' Compensation Act.[8]

Regarding appellant's allegations that the employing establishment acted unreasonably in scheduling route inspections two days after his route was adjusted to over 600 stops, choosing to have inspectors ride with the carriers, and ignoring his wish to be paired with someone besides Ms. Bebbington, and that Ms. Bebbington herself unreasonably monitored his activities during his route, watching over his shoulder, questioning his failure to case any of the spurs, asking him about the placement of his water bottle, and instructing him to remove his clock from the dashboard, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[9] Although the handling of disciplinary actions, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.[10] However, the Board has also found that an administrative or personnel matter will be considered to be an employment

[5] *Bernard Snowden*, 49 ECAB 144 (1997).

[6] *Marguerite J. Toland*, 52 ECAB 294 (2001).

[7] *Id.*

[8] 5 U.S.C. §§ 8101-8193.

[9] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

[10] *Id.* Thus, the mid-April letter of warning appellant received for failure to deliver mail would also constitute an administrative function of the employer.

factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11] In the instant case, appellant did not provide any corroborative evidence to establish that these events were beyond the scope of Ms. Bebbington's responsibilities as a supervisor. Ms. Bebbington explained her actions and the reasons for her behavior, and Mr. Augustine stated that management had never stated, done or implied anything that would give appellant the impression that they were trying to force him to retire. Further, Mr. Augustine explained that despite his 30 years of experience, appellant still had to be given instructions about the proper performance of his duties on several occasions. Thus, appellant has not established a compensable employment factor under the Act with respect these administrative matters.

To the extent that appellant is alleging that he was singled out and discriminated against because of his age, in an effort to force him to retire, the Board has held that to the extent that 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 under the Act.[13] In the present case, the record does not support appellant's allegation that he was harassed and discriminated against in an effort to force him to retire. Appellant has not provided any corroborative evidence to establish that he received disparate treatment, and Mr. Watts, the union representative, clearly explained that all carrier routes were inspected as part of a comprehensive scheme, many carriers were disciplined for poor performance, and all routes found under eight hours were adjusted to include more stops.[14] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.[15] However, appellant has not alleged that his emotional condition resulted from his delivery route, but rather alleged that it stemmed from what he perceived as unfair treatment on behalf of the employing establishment.

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[11] *Reco Roncaglione*, 52 ECAB 454 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[12] *Marguerite J. Toland*, *supra* note 6.

[13] *Reco Roncaglione*, *supra* note 11.

[14] *Marguerite J. Toland*, *supra* note 6; *James E. Norris*, *supra* note 11. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.

[15] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983). In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines.

Finally, regarding appellant's assertion that it hurt his feelings to hear Mr. Augustine say to Mr. Watts, in a laughing tone, "What do you think, John - 45 days?", referring to the length of time appellant might be out on stress-related leave, the Board has recognized the compensability of verbal altercations or abuse in certain circumstances. However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[16] While Mr. Watts confirmed that Mr. Augustine made the comment in question, he did not indicate that the comment was made in a laughing or otherwise hurtful manner. As appellant did not submit any evidence, such as witness statements, to support his allegation that Mr. Augustine made the comment in a laughing manner, thus, appellant has not established a compensable employment factor under the Act with respect to the claimed verbal abuse.[17]

CONCLUSION

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. Therefore, the Board need not address the medical evidence of record.[18]

[16] *Harriet J. Landry*, 47 ECAB 543 (1996).

[17] *Id.*

[18] *Roger Williams, supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 11, 2003 is affirmed.

Issued: April 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member