United States Department of Labor
Employees' Compensation Appeals Board

FREDDIE C. NIMPHIUS, JR., Appellant	)	
and	)	**Docket No. 03-667**
	)	**Issued: August 2, 2004**
U.S. POSTAL SERVICE, NORTHDALE ANNEX, Tampa, FL, Employer	)	

Appearances:
Freddie C. Nimphius, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 7, 2003 appellant filed an appeal from a September 30, 2002 merit decision of a hearing representative of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's case.

ISSUE

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

FACTUAL HISTORY

On September 5, 2000 appellant, then a 50-year-old letter carrier, filed a claim for compensation for a traumatic injury occurring that day. Appellant cited extreme constant harassment from his supervisor as the cause of his condition, which he described as a fast heartbeat, extreme faintness and stress. Appellant stopped work on September 5, 2000.

In an undated response to appellant's filing of this claim, his supervisor stated that she greeted appellant at about 7:40 a.m. on September 5, 2000, at about 9:30 a.m. she asked him for

the second time how long he would need to complete his route, he told her 9 hours, she advised him he would need to do a 45-minute trip on another route for a 10-hour workday, and he refused, saying he would do 10 hours on his own route. The supervisor continued that she again gave appellant these instructions after talking to her manager, that appellant again told her he could not complete this assignment in 10 hours as he was rolling his gurney to his vehicle, that she offered 15 minutes of penalty overtime which appellant said would be "a blessing," and that appellant then told her he would return for the mail for the other route after he finished his route rather than take it with him because it would not fit in his vehicle. The supervisor stated that she then got her manager who pushed some of the trays further into appellant's vehicle and explained how the trays for the second route would fit if he rearranged some of his trays, that appellant was told he needed to take this mail and would not be paid additional penalty overtime to travel back and forth for it, and that appellant then walked away stating he could not handle the stress.

Appellant submitted a copy of a September 15, 2000 statement that he had provided to his attending Board-certified psychiatrist, Dr. Gillian Karatinos, in which he stated that on the morning of September 5, 2000 his supervisor asked him three times by 8:50 a.m. how much time he needed to deliver his route that day, that he talked to the manager at about 9:15 a.m. about the harassment from his supervisor, that his supervisor asked him twice about his workload at 9:30 a.m., and that he told her he had plenty of work to spend 9 hours on his route. Appellant stated that his supervisor then told him to work 45 minutes on another carrier's route, that he told her he was not on the overtime list, that she told him he had to take the mail for the other route and work 1 hour overtime, and that he told her he had enough mail on his own route to work 10 hours and that to curtail his mail to work overtime on another route was a contract violation. Appellant continued that he accepted the assignment and requested to see his union steward to file a grievance, that his supervisor disagreed that he had 23 parcels even though he counted them right in front of her desk, that after he loaded his vehicle he told his supervisor his vehicle was full and he could not take the mail from the other route, that his supervisor and the manager instructed him to rearrange his mail but it would not fit, that they wanted him to stack his mail but he told them this was unsafe, and that he began to feel faint, his heart was pounding, and his body felt strange, whereupon he left to seek medical attention at about 11:30 a.m.

Appellant submitted medical reports from Dr. Karatinos, who set forth the history contained in appellant's September 15, 2000 statement, diagnosed anxiety disorder and indicated that appellant was totally disabled from September 5 to 15, 2000. He also submitted statements from coworkers that on September 5, 2000 they saw appellant's supervisor ask him how long it would take him to deliver his route.

On October 19, 2000 the employing establishment issued appellant a notice of proposed removal for unsatisfactory performance, improper conduct and failure to follow instructions on September 5, 2000. By decision dated November 27, 2000, the employing establishment reduced the notice of proposed removal to a letter of warning. By decision dated February 8, 2001, the employing establishment's dispute resolution team expunged the letter of warning from all files, and found that neither appellant nor his supervisor "handled the matter in the most appropriate manner. The carrier should have been more cooperative and the supervisor should have diffused the situation before it escalated to the point that it did."

By decision dated October 15, 2001, the Office found that all the factors cited in appellant's claim were administrative or personnel matters and that appellant had not shown error or abuse by the employing establishment.

Appellant requested a hearing, which was held on June 18, 2002. Appellant testified that he was on the list to work only his own route and not on the overtime desired list, that he curtailed about eight feet of his mail on September 5, 2000 per his supervisor's instructions, and that he received pay for administrative leave and overtime in the settlement of his grievance and Equal Employment Opportunity complaints about the proposal to remove him.

By decision dated September 30, 2002, an Office hearing representative found that all incidents occurred as described by appellant, but that, none of them constituted compensable factors of employment.

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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] Handling of disciplinary actions,[2] the assignment of work,[3] and the monitoring of activities at work[4] are generally related to the employment, they are administrative functions of the employer, and not duties of the employee. Work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity.[5] Administrative or personnel matters will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.[6] The mere fact that personnel actions were later modified or rescinded does not in and of itself establish error or abuse.[7]

ANALYSIS

Appellant attributed his emotional condition and his physical conditions of fast heartbeat and extreme faintness to a dispute with his supervisor on September 5, 2000 about what mail he would deliver and whether the mail would fit in his vehicle. Specific rules apply to interactions

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[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Sharon R. Bowman*, 45 ECAB 187 (1993).

[3] *James W. Griffin*, 45 ECAB 774 (1994).

[4] *Jimmy Gilbreath*, 44 ECAB 555 (1993).

[5] *Robert Knoke*, 51 ECAB 319 (2000); *Rudy Madril*, 45 ECAB 602 (1994).

[6] *Richard J. Dube*, 42 ECAB 916 (1991).

[7] *Michael Thomas Plante*, 44 ECAB 510 (1993).

with supervisors, who must be allowed to perform their duties, including actions that employees will dislike.[8] These interactions fall within the area of work assignments and are not compensable when appellant establishes error or abuse. Appellant has not shown error or abuse in his supervisor's instructions. Although he testified at a June 18, 2002 hearing that he was on the list to work only his own route and not on the overtime desired list, this does not establish that the employing establishment could not instruct him to carry part of another carrier's route or make him work overtime or in any way committed any error or abuse in an administrative matter.

Appellant also attributed his condition to the disciplinary action related to the September 5, 2000 incident. Although the notice of proposed removal was reduced to a letter of warning, which was expunged from all files, this does not show error or abuse by the employing establishment, despite the finding of the dispute resolution team that neither appellant nor his supervisor "handled the matter in the most appropriate manner." Appellant also has not shown that the monitoring of his work and the repeated requests by his supervisor for an estimate of the time needed to deliver his mail were abusive.

CONCLUSION

Appellant has not shown error or abuse in any of the employing establishment's administrative or personnel actions and has not established any compensable factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[8] *Daniel B. Arroyo*, 48 ECAB 204, 207 (1996).