United States Department of Labor
Employees' Compensation Appeals Board

CRAIG S. PASTERNAK, Appellant	)	
and	)	**Docket No. 03-1155**
	)	**Issued: January 27, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Steamboat Springs, CO, Employer	)	

Appearances:
Craig S. Pasternak, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 1, 2003 appellant filed a timely appeal of the February 27, 2003 decision of the Office of Workers' Compensation Programs, which denied appellant's occupational disease claim on the merits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On July 1, 2002 appellant, then a 43-year-old clerk, filed an occupational disease claim alleging that he developed anxiety and stress at the employing establishment commencing August 28, 2001. He stated that he was denied the opportunity to work overtime at the employing establishment. Furthermore, appellant alleged that he was harassed and embarrassed by his supervisor and Postmaster during a safety talk on Anthrax and was provided with return to

work packets on two occasions. He stated that he was denied continuation of pay and granted sick leave after he filed his claim for occupational disease for the period August 28 to September 7, 2001 and then from November 3 to 24, 2001. Finally, appellant alleged that management did not take his concerns regarding exposure to Anthrax seriously.

The employing establishment submitted a statement from appellant's supervisor, Vigil Padilla, dated August 5, 2002, which noted that, on August 28, 2001, he was confronted by appellant regarding being passed over for overtime. Mr. Padilla informed appellant that he would investigate the matter and if appellant was wrongfully passed over for overtime work he would be given the opportunity to make up the overtime. He indicated that appellant informed him that same day that he was too stressed out to work and that management was not treating him fairly. Mr. Padilla indicated that, later that same day, appellant filed an emotional condition claim and he provided appellant with a return to work packet. He advised that on November 2, 2001 appellant presented a note from his physician indicating that he was experiencing stress in his personal life and at work and Mr. Padilla again issued him a return to work packet.

Also submitted was a statement dated August 13, 2002 from Postmaster William M. Butler, who advised, during a safety talk about Anthrax, that he did make a statement indicating that a person would have more potential for causing themselves injury or physical problems by smoking or not using their seat belts in a car than being exposed to Anthrax spores at work. He indicated that he had a license, as a nurse, was a medic for 20 years and a chemical, biological and nuclear warfare instructor with the U.S. Army Reserve. Mr. Butler indicated that he discussed pertinent issues with the employees so as to alleviate the fears for potential calamity in the office when Steamboat Springs was not a high profile target for contagion and that the chances of exposure were infinitesimally small. He advised that preventative measures were taken at the employing establishment by providing protective masks and nitrite gloves to all employees. Mr. Butler noted that appellant was given return to work packets because appellant's absence from work was longer than three days and a medical clearance was mandated before appellant could return to work. He noted that appellant was not skipped in rotation for opportunities to work overtime and advised that the rotation was found to be fair through the grievance/arbitration process and any inequities were addressed and corrected through that process. Mr. Butler further noted that the supervisors would not call employees at home when opportunities for overtime were offered and advised that appellant disagreed with this policy and would monitor the overtime list daily. He indicated that appellant was given sick leave to cover his absences during the periods in question and noted that he was initially given leave without pay (LWOP) as appellant failed to provide the requested documentation for his absences. In a memorandum dated September 4, 2002, Mr. Butler set forth the overtime procedures at the employing establishment.

Appellant submitted a report from Dr. William W. Philip, a Board-certified psychiatrist, dated June 24, 2002, which advised that appellant's symptoms of anxiety and depression were caused by the stresses of his work environment. Also submitted was a report from Carol Gordon, a licensed social worker, who also indicated that appellant's symptoms of anxiety and depression were caused by the stresses of his work environment. Additionally, appellant submitted a report from Dr. Philip, dated January 23, 2003, which diagnosed adjustment disorder

with mixed emotional features. He advised that all of appellant's psychiatric symptoms were connected to his workplace.

In a decision dated February 27, 2003, the Office denied appellant's claim on the grounds that the evidence of record submitted failed to demonstrate that the claimed emotional condition occurred in the performance of duty.

LEGAL PRECEDENT

To establish that appellant sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.[1]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview 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 is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[2] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[3]

[1] *See Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

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

[3] *Ruthie M. Evans*, 41 ECAB 416 (1990).

ANALYSIS

Regarding appellant's allegation that he was denied opportunities for overtime, the Board finds that these allegations relate to administrative or personnel matters.[4] The Board finds that the evidence does not establish that the employing establishment either erred or acted abusively in addressing appellant's overtime requests.[5] The Board notes that appellant submitted no evidence to substantiate his claim that he was not offered opportunities for overtime and appellant's postmaster, Mr. Butler, noted that appellant was not skipped in rotation for opportunities to work overtime and advised that the rotation was found to be fair. Regarding appellant's allegations that the employing establishment wrongly denied continuation of pay for lost work, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[6] Mr. Butler indicated that appellant was given sick leave to cover his absences during the periods in question and noted that he was initially given LWOP as appellant failed to provide the requested documentation for his absences. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that management harassed and embarrassed him during a safety talk on Anthrax and provided him with return to work packets on two occasions. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[7] However, for harassment to give rise to a compensable disability under the Act there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[8] General allegations of harassment are not sufficient and, in this case, appellant has not submitted sufficient evidence to establish that he was harassed by his supervisor.[9]

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[4] As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act. However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor. *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

[5] *See Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991). (Proper pay and overtime are administrative or personnel matters and an employee's emotional reaction to the actions taken by the employing establishment is not covered under the 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). The Board notes that appellant submitted no evidence to substantiate his claim that he was denied overtime and the employing establishment indicated appellant was properly offered overtime on a rotation basis.

[6] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[7] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 1.

[8] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[9] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

Appellant noted the Postmaster embarrassed and humiliated him when, while the Postmaster was presenting a safety talk on Anthrax exposure, appellant asked a question regarding his fear of potential Anthrax exposure. Appellant's supervisor indicated that appellant took his comments out of context and indicated that, during a safety talk about Anthrax, he did make a statement indicating that a person would have more potential for causing themselves injury or physical problems by smoking or not using their seat belts in a car than being exposed to Anthrax spores at work. He advised that his comments were an attempt to alleviate the fears for potential calamity in the office as Steamboat Springs was not a high profile target for contagion and that the chances of exposure were infinitesimally small. Mr. Butler advised that preventative measure were taken by providing protective masks and nitrite gloves to all employees. He further advised that appellant was given return to work packets because his absence from work was for longer than three days and medical clearance was mandated before appellant could return to work.

The Board notes that vague allegations of a supervisor berating and taunting appellant are insufficient to establish appellant's claim that he was harassed. 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 evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[10] Appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[11] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Finally, appellant alleged that management did not take his concerns regarding exposure to Anthrax seriously and that his fear of exposure to Anthrax was a real concern as he worked as a clerk and handled mail everyday. The Board initially notes that that there was no evidence that Anthrax was found at the employing establishment.[12] Additionally, the record is void of any evidence that appellant ingested, inhaled or in any manner came into direct physical contact with Anthrax while in the performance of duty. This case can, therefore, be distinguished from those in which the claimant is exposed to an unknown and potentially dangerous substance.[13] The

[10] *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

[11] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[12] Where the disability does not result from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability would not come within the coverage of the Act. *See Lillian Cutler, supra* note 2.

[13] *See Judy C. Rogers*, 54 ECAB __ (Docket No. 03-565, issued July 9, 2003).

Board thus finds that appellant's reaction was self-generated and was based on his mere perception of events, and perceptions and feelings alone are not compensable factors.

CONCLUSION

The Board finds that as appellant has not established a compensable employment factor, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty as alleged.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member