

**United States Department of Labor
Employees' Compensation Appeals Board**

CHARLES A. SPOERL, Appellant)	
)	
and)	Docket No. 04-372
)	Issued: May 27, 2004
U.S. POSTAL SERVICE, POST OFFICE, Englewood, CO, Employer)	
)	

Appearances:
Charles A. Spoerl, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 28, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated September 25, 2003. 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 has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 1, 2003 appellant, then a 49-year-old modified letter carrier, filed an occupational disease claim alleging that he developed general anxiety disorder and coronary artery disease in the performance of duty. He indicated that he first became aware of the injury and its relation to his work on March 12, 2003. The employing establishment controverted the claim and alleged that this was a preexisting condition that only affected appellant "when he

does not get his way,” noting that this was the “third incident.”¹ He stopped work on March 12, 2003 and returned on March 18, 2003.

In support of his claim, appellant submitted a statement indicating that he became aware of anxiety caused by management on May 16, 2001 while trying to perform his duties and noted that his condition was aggravated by the employing establishment causing him anxiety and chest pain which resulted in his hospitalization.

In a letter dated May 5, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim and requested that he submit additional supportive factual and medical evidence.

The Office subsequently received a March 17, 2003 attending physician’s report from Dr. R. Clarke Maiocco, Board-certified in emergency medicine, who diagnosed anxiety and coronary artery disease and checked the box “yes,” indicating that appellant’s condition was caused or aggravated by employment activities. Additionally, a copy of an April 25, 2002 language settlement was provided, in which management agreed to allow carriers to check accountable mail each day in the “p.m.,” and that if there was a change to the hours or duties assigned in the a.m., the p.m. supervisor would indicate that change on PS Form 3996.

Appellant subsequently provided an undated response which was received by the Office on May 30, 2003 alleging that on December 14 and 27, 2002 and March 10, 2003, Wendi Kaminski, his supervisor, forced him off the clock and would not allow any overtime. He also alleged that on March 12, 2003 the supervisor forced him off the clock before he could check in his accountables. Appellant alleged that these incidents caused his chest pains and anxiety.

By letter dated June 6, 2003, the Office requested additional information from the employing establishment.

In a July 30, 2003 response, Kathleen M. Allen, an employing establishment human resources specialist, indicated that Ms. Kaminski, appellant’s supervisor, denied that she forced him off the clock and would not allow him overtime. She also denied that she became angry and yelled at appellant or that she harassed, discriminated or showed disrespect towards him.

In a September 25, 2003 decision, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable factors of employment, he failed to establish that he sustained the claimed conditions in the performance of duty.²

¹ The record reflects that appellant filed a previous stress claim for an injury occurring on May 16, 2001. By decision dated September 6, 2002, Docket No. 02-739, the Board affirmed an Office decision dated November 7, 2001, which found that appellant did not establish that he sustained an injury in the performance of duty.

² The record does not show that the coronary artery condition aspect of appellant’s claim was developed by the Office in the claim file that is before the Board. Consequently, the Board has no jurisdiction over this aspect of appellant’s claim. 20 C.F.R. § 501.2 (c).

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ 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.⁴

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.⁵ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.⁶

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.⁷ 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated September 25, 2003, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must thus, initially review whether these

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that his supervisor would not allow him overtime or forced him off the clock on December 14 and 27, 2002 and March 10 and 12, 2003, 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 However, the Board has also found that an administrative or personnel matter will be considered to be an employment 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.¹⁰

The Board has long held that the assignment of a work schedule is an administrative function of the employing establishment and, absent error or abuse, does not constitute a compensable factor of employment.¹¹ In the case at hand, the employing establishment denied any error or abuse. The employing establishment denied the claim and advised that this was the third time appellant alleged stress. They indicated that he had a preexisting condition that only occurred when appellant did not "get his way." The employing establishment also responded to a June 6, 2003 request from the Office for additional information and denied forcing appellant off the clock, denying him overtime, yelling at him, becoming angry, harassing him, discriminating against or being disrespectful towards him. Although appellant alleged that the employing establishment engaged in the above activities, he did not provide additional evidence to support his allegations. For instance he did not provide an independent witness statement or additional support for his claim to establish that the allegations occurred. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. 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 under the Act.¹³ In this case, the employing establishment denied that appellant was subjected to

⁹ See *Penelope C. Owens*, 54 ECAB ___ (Docket No. 03-1078, issued July 7, 2003). Assignment of work is an administrative or personnel matter of the employing establishment and coverage can only be afforded where there is a showing of error or abuse. *Robert W. Johns*, 51 ECAB 137 (1999); *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ *Peggy R. Lee*, 46 ECAB 527 (1995).

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

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discrimination against by his supervisors. Appellant alleged that supervisors made statements and engaged in actions, which he believed constituted harassment, but he provided no corroborating evidence, such as specific witnesses' statements to establish that the statements were actually made or that the actions actually occurred in the manner alleged.

Appellant also alleged that his supervisor, Ms. Kaminski, yelled at him. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by appellant and supported by the evidence may constitute a compensable factor of employment.¹⁴ However, appellant's supervisor denied that she yelled at him. Appellant did not submit any independent statements or corroborating evidence to support that he was yelled at by his supervisor. The evidence, therefore, is insufficient to indicate that Ms. Kaminski engaged in verbal abuse of appellant and this factor is not a compensable factor of employment.

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, he, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁵

¹⁴ *Janet D. Yates*, 49 ECAB 240 (1997).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 25, 2003 is affirmed.

Issued: May 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member