

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

JAMES H. HUSKEY, Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Jacksonville, NC, Employer

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**Docket No. 04-1771
Issued: October 15, 2004**

Appearances:

Ernest J. Wright, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 6, 2004 appellant filed a timely appeal of an Office of Workers' Compensation Programs' decision dated May 21, 2004, finding that appellant had not established an emotional condition causally related to compensable work factors. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment.

FACTUAL HISTORY

On December 4, 2003 appellant, then a 55-year-old sales/service associate, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he developed an emotional condition as a result of his federal employment. In a narrative statement appellant explained that in October 2002 he was told that his job was being eliminated, that he was an unassigned regular employee and he should report to the Camp Lejeune Post Office as of

November 4, 2002. He was assigned window duties and asked about travel pay for the extra 20 miles of travel each day to the Camp Lejeune worksite, but was told he was not eligible. In May 2003, appellant was told to report back to his old job. In October 2003, he was told he would be assigned to work bulk mail, but a few days later was told he would not work bulk mail. Appellant again sought travel pay for his time at the Camp Lejeune site, but he was informed on November 4, 2003 that the postmaster denied his request and he was not provided a reason. Appellant indicated that he became upset and stopped working on November 4, 2003.

In a statement dated December 12, 2003, appellant's supervisor indicated that in September 2002 a decision was made to eliminate appellant's position because flat sorting machines had reduced the need for mail sorters. According to the supervisor, appellant was reassigned to the Camp Lejeune office as there was an opening there; he was reassigned to his old position because the regular clerk returned to work at Camp Lejeune. The supervisor stated that he told appellant he was not entitled to travel pay to the Camp Lejeune worksite because that was his assigned duty station at that time.

The postmaster submitted a December 17, 2003 statement confirming that he had denied appellant's request for travel pay for mileage to Camp Lejeune. He indicated that an employee is entitled to travel pay when the employee reports to work at one station and is told to work at another station, but if an unassigned employee is told verbally or in writing to report to a station then it becomes his assigned station and the employee is not entitled to travel pay. The supervisor stated that appellant was aware of the responsibilities for submitting proper documentation for travel pay, as he had received travel reimbursement in the past, but he never submitted a request for travel pay in this instance.

Appellant submitted an October 25, 2002 letter from the employing establishment notifying him that due to a realignment of jobs, his position was being abolished and he would be an unassigned regular full-time employee until further notice. He also submitted two brief statements from coworkers stating that they were paid for travel while working as unassigned regular employees.

In a letter dated January 9, 2004, appellant stated that he was told by his supervisor that he would get paid for travel, only to be told later that he would not be paid and he was never provided a reason. Appellant alleged that he had been moved around from one place to another without being told how it could happen or by what authority. According to him the employing establishment was wrong in these matters and failed to adequately explain why it was being done. Accompanying appellant's statement were medical reports regarding treatment for depression and anxiety disorder.

In a decision dated February 5, 2004, the Office denied appellant's claim. The Office found that appellant did not establish a compensable work factor with respect to his claim.

By letter dated March 4, 2004, appellant requested a review of the written record. He submitted a grievance settlement dated January 16, 2004; the names of the affected employees were removed. The settlement indicated that the employees would be paid a lump sum for travel pay and also noted that after the number of affected employees that will return to the

Jacksonville worksite were determined, the postmaster at that site would establish a sufficient number of full-time positions to accommodate employees whose positions were abolished.

By decision dated May 21, 2004, an Office hearing representative affirmed the February 5, 2004 decision. The hearing representative found that appellant had not established a compensable work factor with respect to his claim.

LEGAL PRECEDENT

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

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 illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it, but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where 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.³

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁶

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Anna C. Leanza*, 48 ECAB 115 (1996).

ANALYSIS

Appellant's statements indicate that his claim is based primarily on two allegations of administrative error by the employing establishment: (1) that it improperly eliminated his position in 2002 and reassigned him to another post office; and (2) that his request for travel pay was denied. Both of these matters involve administrative actions of the employing establishment and appellant must establish error or abuse to substantiate a compensable work factor. With respect to the first allegation of error, appellant's supervisors explained that the position was eliminated because the flat sorting machines had reduced the need for mail sorters and it was determined that the position could be eliminated. Appellant was transferred because there was an opening at the Camp Lejeune worksite and he was transferred back in May 2003, because a clerk had returned to Camp Lejeune.

On appeal appellant refers to the grievance settlement submitted and argues that it shows the employing establishment erred in eliminating his job. He acknowledges that the settlement involved other employees and he had filed a separate grievance with respect to travel pay. The settlement submitted, therefore, does not involve appellant and it is not clear what specific issues were raised in the grievance. The primary matter appeared to involve travel pay; there is reference to accommodating employees whose jobs were abolished, but it is not clear whether this is relevant to appellant's situation. The Board notes that the settlement does not acknowledge any error by the employing establishment with respect to any issue. The grievance settlement is of diminished value regarding the establishment of a compensable work factor in this case.

Based on the evidence of record, the Board finds no evidence of error or abuse by the employing establishment with respect to job elimination or reassignment. The employing establishment explained its administrative decisions regarding appellant and there is no probative evidence establishing a compensable work factor in this regard.

With respect to travel pay, the employing establishment's supervisors reported that an unassigned employee is not entitled to travel pay under the circumstances presented. The postmaster also indicated that appellant did not file proper documentation for travel pay. Although he reported that a grievance was filed on the issue, there is no evidence in the record regarding the grievance or other evidence to support a finding of error by the employing establishment in denying travel pay. The witness statements do not provide sufficient details regarding receipt of travel pay and do not discuss appellant's specific situation. In the absence of probative evidence, the Board finds that appellant has not established error or abuse by the employing establishment with respect to travel pay.

The remainder of allegations involve a general assertion that the employing establishment did not explain its decisions adequately and there was stress from the uncertainty of the reassignments and whether appellant would retain his job. The Board notes that feelings of job insecurity or fear of transfers and reassignments are not considered compensable work factors as they are considered self-generated and do not arise from assigned duties.⁷ While appellant may

⁷ See *Gregorio E. Conde*, 52 ECAB 410, 412 (2001); *Purvis Nettles*, 44 ECAB 623, 628 (1993).

have wished to receive more explanation regarding administrative decisions, there is no evidence of any error or abuse in this regard. The October 25, 2002 letter, for example, provided the reasons for appellant's reassignment and the supervisor stated that he did inform appellant of the reasons his travel pay was denied.

The Board, accordingly, finds that appellant did not establish a compensable work factor with respect to the allegations made in this claim. Since no compensable work factors have been established, the Board will not address the medical evidence at this time.⁸

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition causally related to compensable work factors. Appellant did not establish error or abuse in an administrative matter or otherwise substantiate a compensable work factor with respect to his claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers Compensation Programs dated May 21 and February 5, 2004 are affirmed.

Issued: October 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ *Roger Williams*, 52 ECAB 468, 474 (2001).