

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

FRANK M. REAGAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 04-1043
Issued: September 21, 2004**

Appearances:

*Capp P. Taylor, Esq., for the appellant
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 March 10, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 18, 2004 that found that appellant failed to establish that he sustained stress and high blood pressure in the performance of his federal duties.

ISSUE

The issue is whether the Office has established that he sustained stress and high blood pressure in the performance of his federal duties. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over this case.

FACTUAL HISTORY

On January 18, 2002 appellant, then a 54-year-old mail processor, filed notice of traumatic injury alleging that abusive personnel policies caused him to experience stress and high blood pressure. The file contains a January 18, 2002 report from Dr. Charles Walker, an

emergency room physician, who stated that appellant presented with acute stress and high blood pressure due to problems at work.

Appellant elaborated on his allegations in a February 24, 2002 letter in which he stated that his emotional condition was the result of harassment, error and abuse by management. Specifically, appellant mentioned a December 28, 2001 second investigative interview conducted by his supervisor, Anna Caldwell, which he stated was humiliating, unnecessary and inappropriate. Appellant also alleged that his condition was caused by a January 17, 2002 letter of removal that he received for allegedly falsifying leave documents.

Both the investigation and the letter of removal are related to a December 8, 2001 incident when appellant called in to request use of the Family Medical Leave (FMLA) to care for his ailing wife. Appellant's wife, who was on medical leave from the same employing establishment for a work-related emotional condition, suffered from severe depression, anxiety and agoraphobia.¹ Appellant indicated that his wife was experiencing an acute episode of her conditions and her doctor had told him to take her outside if possible. According to appellant, after notifying the employing establishment he would not be at work, his son offered him and his wife basketball tickets; as his wife's doctor had urged him to take her out whenever possible, they went to the game. Appellant was seen at the game by a coworker and this led to the removal letter for falsifying documents.

Appellant also alleged that he and his wife were harassed by Daryl Johnson, a supervisor and Paula Holland and Adreinne Jones, fellow supervisors. According to appellant, these supervisors are black, he is white and his wife is Hispanic with a very dark complexion. Appellant stated that Mr. Johnson paid his wife unwanted personal attention and made disparaging remarks to her about him. According to appellant, Mr. Johnson said that he hated him and was going to get him. Appellant and his wife ultimately filed multiple grievances and Equal Employment Opportunity complaints against Mr. Johnson. Appellant also filed grievances against Maryanne Anne Maines, his second level supervisor, for requiring him to produce documentation regarding his use of the FMLA. According to appellant, the letter of removal was in retaliation for the grievances against his supervisors.²

Appellant submitted several witness statements that corroborated that he was very upset after the second interview and that he was convinced that the employing establishment was going to fire him. The statements also supported that appellant was stressed and the witnesses believed that he was being retaliated against for his various claims against management, Mr. Johnson in particular. In a January 20, 2002 letter, Dale W. Connors, a coworker, stated that appellant told him that management threatened him with removal, fines and prison time for going to a basketball game with his wife. Mr. Connor stated that he had no doubt that actions taken against appellant was management's way of retaliating for the sexual harassment charges appellant filed. Mr. Connor added that appellant was withdrawn, depressed and frustrated at management's actions and that management wanted to harass him rather than take corrective action against him.

¹ One symptom of agoraphobia is the refusal to go outside.

² The letter of removal was later changed to a 14-day suspension.

In an undated statement, Mr. Connor noted that on March 22, 2000 Mr. Johnson and Carl McGuire were engaged in a conversation and looking intently at him and appellant, causing them to feel uncomfortable. In a January 29, 2002 letter, J. Randy Porter, a former union steward, stated that appellant was visibly shaken by an investigative interview related to his use of the FMLA. In a February 1, 2002 letter, Carmen Reagan, appellant's wife stated that it would be impossible to detail all the abuse she and her husband have endured the last few years from postal management, but she wanted to note the effect it had on her husband, who witnessed the harassment she received from a supervisor. Ms. Reagan stated that appellant was so frustrated that she feared he would have a heart attack, that he was anxious that someone at work was going to frame him in order to have him terminated. She stated that appellant had nightmares about work and was frequently distracted and worried that he was going to be fired.

In a February 6, 2002 letter, Fred Maier, a coworker, indicated that appellant was upset and under distress due to an investigation. In a February 9, 2002 letter, Carliss Bell, a union steward, stated that appellant was very upset by a notice of removal he had received and was "beet red" from the neck down. In a February 15, 2002 letter, Mark Donatelli stated that appellant appeared to be under mental stress and anxiety since the alleged sexual harassment of his wife by a supervisor in 1997 and later after management threatened to remove him. In a February 18, 2002 letter, Gregorio Alfonso noted that appellant told him on several occasions that management threatened to remove him.

The record also contains a January 29, 2001 letter from Jane Sells, a union steward, who stated that appellant was in a state of disbelief and disgust when, during the December 28, 2001 interview, Ms. Caldwell cautioned appellant to pay close attention to the section related to fines and imprisonment. She also added that it was her belief that all this stemmed from sexual harassment charges against Mr. Johnson that appellant and his wife filed.³ Appellant also noted that all but two of his grievances were dismissed and the remaining two were consolidated and pending.

A March 24, 2002 letter signed by Ms. Caldwell, appellant's first level supervisor and Ms. Maines, his second level supervisor, denied harassment and retaliation against appellant. They also noted that the second interview was necessary to get more information and that the letter of removal was justified because appellant improperly used sick leave and the FMLA, which they claim, according to postal regulation, is only available when a person is incapacitated. In a November 19, 2002 letter, Mr. Johnson denied harassing, stalking or staring at appellant.

By decision dated March 21, 2002, the Office denied appellant's claim, finding that he alleged factors that were not in the performance of duty and that he had not established that the allegations of abuse had occurred. The Office noted that allegations related to discipline are not considered in the performance of duty and that appellant had not established as factual that he was harassed or retaliated against by his supervisors.

³ Appellant's wife alleged sexual harassment against Mr. Johnson related to his behavior toward her. Appellant filed a similar charge against him for actions he allegedly witnessed toward another female coworker. Appellant's wife's charge was deemed to have merit while appellant's charge was dismissed.

Appellant requested a hearing and argued that he had properly used the FMLA to assist his wife and that the letter of removal was in retaliation to his claims. By decision dated January 15, 2003, the hearing representative affirmed the March 21, 2002 decision.

In an October 22, 2003 letter, appellant requested reconsideration and argued through his representative that his letter of removal was in retaliation for the claims he filed against management. In support of his request, appellant submitted an October 22, 2003 report from Dr. Gary Arthur, Board-certified in psychiatry, who stated that he had treated appellant's spouse for over seven years for major depression, anxiety and panic attacks and agoraphobia and that he had urged appellant to take her outside whenever possible. Appellant also submitted a copy of postal regulations with definitions of the FMLA and sick leave.

By decision dated February 18, 2004, the Office denied modification of the prior decision which denied the claim.

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 comes within the coverage of the Federal Employees' Compensation Act.⁴ 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.⁵

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.⁶ 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.⁷

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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

factors of employment and may not be considered.⁸ 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.⁹

ANALYSIS

Appellant alleged that he sustained stress and high blood pressure as a result of a number of abusive personnel policies and other employment incidents and conditions. In its most recent decision dated February 18, 2004, 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 alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave and unreasonably monitored his activities at work, 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.¹⁰ Although the handling of disciplinary actions, leave requests 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.¹¹

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.¹² Appellant has alleged that the employing establishment acted abusively in conducting a humiliating, unnecessary and inappropriate investigation of his use of leave and issuing him a notice of removal. But appellant's supervisors stated that they conducted the investigation to get additional information and that they issued the letter of removal for improper use of leave. Appellant submitted several witness statements, but the statements are related to how appellant responded and felt about management in general. Although they support that appellant was distressed and frustrated and that he feared he was going to be terminated, they do not provide specific instances of actions or words by management that were an error or abusive. Thus, appellant has not established a compensable employment factor under the Act with respect

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹¹ *Id.*

¹² See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

to administrative matters. The Board also notes that the fact that the letter of removal was later modified to a 14-day suspension does not in and of itself, establish error or abuse.¹³

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. He alleged that Mr. Johnson stared at him and threatened to get him. 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.¹⁴ 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.¹⁵ In the present case, Mr. Johnson and other supervisors denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.¹⁶

Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence to establish that the statements actually were made or that the actions actually occurred.¹⁷ As mentioned above, none of the witness statements established that specific words were stated or actions taken by supervisors towards appellant. They reflected appellant's reactions to what he perceived as harassment and the witnesses' perception of appellant. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.¹⁸

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁹ The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it

¹³ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹⁴ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁶ 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).

¹⁷ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁸ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁹ See *Michael Thomas Plante*, *supra* note 13 at 510, 515.

resulted from his frustration in not being permitted to work in a particular environment or to hold a particular position.²⁰

The Board has held that investigations, which are administrative functions of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.²¹ 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.²² Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. Appellant alleged that his supervisor made abusive statements such as pay close attention to the section on fines and imprisonment during the course of the investigation of him, but he provided no corroborating evidence, such as witness statements, to establish that the statements were actually made.²³ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant's concerns regarding the manner in which the employing establishment disciplined or treated his spouse would not constitute a compensable employment factor in that this would not relate to his regular or specifically assigned duties.²⁴

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.²⁵

²⁰ *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

²¹ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

²² See *Richard J. Dube*, *supra* note 12.

²³ See *Larry J. Thomas*, 44 ECAB 291, 300 (1992).

²⁴ See *id.* at 301.

²⁵ 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).

CONCLUSION

Appellant has not established that he sustained an emotional condition in the performance of his federal duties.

ORDER

IT IS HEREBY ORDERED THAT the decision by the Office of Workers' Compensation Programs dated February 18, 2004 is affirmed.

Issued: September 21, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member