United States Department of Labor
Employees' Compensation Appeals Board

JOSEPH E. TADLEY, Appellant	)	
and	)	**Docket No. 04-2240**
	)	**Issued: April 22, 2005**
U.S. POSTAL SERVICE, INSPECTION SERVICE, Bala Cynwyd, PA, Employer	)	

Appearances:
Joseph E. Tadley, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 15, 2004 appellant filed a timely appeal of a July 7, 2004 merit decision of a hearing representative of the Office of Workers' Compensation Programs, which found that he did not sustain an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

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

FACTUAL HISTORY

On September 16, 2002 appellant, then a 48-year-old inspection service operation technician, filed a claim for compensation for a traumatic injury sustained that date. Appellant listed the nature of the injury as "stress" and the cause as a hostile work environment. On September 23, 2002 appellant filed a claim for compensation for an occupational disease of work-related stress, anxiety and depression. Appellant cited to a hostile work environment,

harassment, discrimination and a December 6, 2001 meeting in which he was intimidated and threatened with corrective action if he went outside the office with any problems. Appellant submitted a July 25, 2002 report from Dr. Louis D. Petrellis, an osteopath, stating that appellant was under his care for anxiety and stress reactions secondary to work-related issues and was unable to work. In a September 20, 2002 report, Dr. Gerald Tadley, an osteopath, described appellant's symptoms and findings on examination on April 24, May 21 and August 27, 2002. He diagnosed elevated blood pressure and lipids, anxiety and depression and concluded: "Employment with postal inspection has caused and aggravated patient's increasing stress and resulting anxiety and depression." Appellant also submitted a September 23, 2002 report from Adina Lambert, M.A., a psychologist.

Patricia Wiggins, appellant's supervisor, submitted a statement noting that on September 25, 2001 appellant attended a picnic for a lengthy period, after which he refused her instruction to write in his lunch time and on October 4, 2001, he filed a grievance accusing her of discrimination and harassment. On April 23, 2002 the operations service group manager brought to her attention that appellant was observed in a lengthy conversation with a coworker and appellant presented himself in a hostile manner when brought to her office to discuss this matter. On April 25, 2002 there were two angry outbursts by appellant and on May 6, 2002 a letter of warning was issued to appellant for unacceptable conduct. On August 27, 2002 Ms. Wiggins and appellant received an email inquiry from an internal crimes inspector about Columbia House loss reports. Appellant's response was that his workload was the reason he had been unable to distribute the reports and that he considered them a low priority. She went to his office and instructed him several times to distribute the reports by the close of business; however, he loudly refused. Ms. Wiggins told him that it would not take much time and he shouted at her to do them. She sent him a follow-up email at about 9:37 a.m. and than about 9:50 a.m. he dropped a leave request form on her desk and said he was going to see his doctor. Ms. Wiggins noted that appellant returned to work on September 3, 2002 and he was instructed to submit a doctor's note to cover his absence. On September 16, 2002 appellant was given a letter of warning in lieu of time-off suspension. He commented that the letter was not true and was further harassment and retaliation for his complaint a year earlier. Appellant then requested a claim form for compensation for a traumatic injury. On September 23, 2002 he provided two medical notes and completed a claim form for compensation for an occupational disease.

Appellant's grievance on the September 25, 2001 incident stated that other employees who attended the picnic did not have to write in their lunch. The grievance requested that management cease and desist discrimination and harassment, apologize and pay appellant ½ hour for lunch. Ms. Wiggins responded to the grievance on November 23, 2001, stating that her response was delayed due to erroneous instruction from human resources on the type of complaint that was submitted. She denied harassing or discriminating against appellant. In staff meetings on December 22, 2000 and May 16, 2001 the technicians were told that they could attend special events, such as the September 25, 2001 picnic, but that if they stayed at these functions they must take their lunch break. She noted that most of appellant's coworkers who attended the September 25, 2001 function returned to the office within 15 minutes. Appellant and a coworker were instructed to write in their lunch time because they stayed for a lengthy period. Her decision to charge him ½ hour for lunch was in accordance with applicable rules and regulations. In an October 11, 2002 statement, James J. Puchala an employing establishment attorney, noted that management requested that he attend a December 6, 2001 meeting with

appellant. He stated that neither he nor Donna M. Harris, the services group manager, intimidated or threatened appellant and that it was brought to appellant's attention that complaints to higher level officials should be routed through his supervisor and the services group manager. In an October 9, 2002 statement, Ms. Harris stated that appellant's grievance regarding the September 25, 2001 incident was on a form not used by the inspection service. A human resources specialist advised appellant's supervisor that they would hear from Equal Employment Opportunity (EEO), but that no contact was made. Appellant was advised of this confusion surrounding his grievance and that his supervisor would respond as soon as she returned to the office. Appellant wrote to the Office of Counsel before his supervisor was able to respond. Ms. Harris stated that at the December 6, 2001 meeting she told appellant that he was expected to follow the chain of command. She noted that going to a building function, having lunch, then wanting to take another lunch violated postal policy.

The May 6, 2002 letter of warning issued to appellant for unacceptable conduct recited that on April 23, 2002 the operation services group manager brought to her attention that he was observed in a conversation with a coworker outside his assigned work area. Ms. Wiggins also noticed this conversation and brought appellant to her office to discuss this matter. It noted prior discussions regarding his excessive obvious socialization. Appellant was not cooperative and presented himself in a hostile manner and abruptly left the Office before the end of her discussion, loudly refusing her request to continue. The letter of warning also noted that on April 25, 2002 there were two angry outbursts by appellant and concluded: "Attempts to intimidate a supervisor by refusing to leave my office as directed and raising your voice to an unacceptable level is unacceptable, unprofessional and disrespectful behavior which will not be tolerated in this unit or office. Furthermore, your challenges to authority have created an uncomfortable and disruptive tension in the Central Testing Unit which is having a negative impact on teamwork."

In a May 15, 2002 response to the letter of warning, appellant contended that it was not true that his supervisor witnessed the April 23, 2002 conversation, that he tried to explain that the maintenance man was cleaning his office so he stepped outside and spoke with a coworker until his office cleaning was finished. He recalled only one meeting that referred to excessive socializing and argued that the letter of warning was unwarranted. Ms. Wiggins thereafter responded that she was within her rights to take disciplinary action considering that prior incidents were documented in which he exhibited the same unacceptable behavior and that he was insubordinate. She contended that appellant used every opportunity to challenge, ignore and disrespect her authority as his supervisor. The September 16, 2002 proposed letter of warning in lieu of time-off suspension found that appellant's refusal to distribute the Columbia House loss reports by the close of business on August 27, 2002 was unacceptable and would not be tolerated.

By letter dated December 4, 2002, the Office advised appellant that the evidence he submitted was insufficient to determine whether he was eligible for compensation. It requested a detailed description of the employment conditions or incidents to which he attributed his condition. On February 9, 2003 appellant submitted a seven-page statement, alleging that he was not allowed to wear headphones as another mailroom employee was. He argued that the May 6, 2002 letter of warning was issued in retaliation for contacting the Employee Assistance Program on April 26, 2002, that he was not permitted a Step B meeting regarding his grievance of the

May 6, 2002 letter of warning and that in the December 6, 2001 meeting he was severely reprimanded for writing to the Office of Counsel and belittled for submitting his grievance on a form not used by the inspection service. On February 6, 2002 he was instructed to remove a sign hanging on his desk because it could be taken as a threat. He stated that the April 23, 2002 conversation with a coworker lasted about one minute and that he did not present himself in a hostile manner when called into his supervisor's office on April 23, 2002. His request for documentation of prior incidents of unacceptable behavior cited in the May 6, 2002 letter of warning was denied. On August 27, 2002 after his supervisor sent him an email about distributing the Columbia House reports, she came to his office to harass and embarrass him. His request to have a lawyer at the September 3, 2002 meeting was denied. Appellant received an email about not taking his lunch within six hours of his start time on November 26, 2001 but another employee's consistent violation of this regulation was overlooked.

Appellant's November 16, 2001 letter to the employing establishment's Office of Counsel complained that he had not received a decision within five days of the submission of his October 4, 2001 grievance, as required. A December 14, 2001 email from his supervisor stated that weekly performance reports were required from all technicians and that the last report she received from him was for the week of October 22, 2001 and that all reports in arrears were due by the end of that day. A February 5, 2002 email from his supervisor instructed him to remove a handwritten note posted over his desk that read "TAKE DEADLY AIM." A June 24, 2002 email from Ms. Harris documented her uncomfortable feeling with appellant in the office and her fear that he might try to do bodily harm if corrective action was carried out against him. Appellant's October 10, 2002 letter to the Employee Assistance Program complained of a hostile and unhealthy work environment. An October 16, 2002 employing establishment letter directed appellant to undergo a psychiatric fitness-for-duty examination with Dr. Martin Rosenzweig, a Board-certified psychiatrist, due to his behavior.

In an October 24, 2002 report, Dr. Rosenzweig concluded that appellant's symptoms were not sufficient to diagnose major depression. He diagnosed an adjustment disorder with mixed anxiety and depressed mood and noted that appellant was not psychiatrically disabled and could return to work. In a February 18, 2003 report, Dr. Petrellis stated that appellant's underlying hypertension and other physical symptoms such as chest pain, for which he underwent a stress test and a cardiac catheterization, were exacerbated by anxiety and stress from work. In a March 3, 2003 note, Dr. Petrellis indicated that appellant could return to part-time work. On March 7, 2003 the employing establishment reassigned appellant to its Philadelphia Division Headquarters. In an April 17, 2003 report, Dr. Paul R. Viola, a Board-certified psychiatrist, stated that appellant was being treated for symptoms of depression and anxiety resulting from conflicts he experienced in his work assignments.

By decision dated August 7, 2003, the Office found that appellant had not sustained an injury in the performance of duty, as his perceptions of discrimination and his reaction to administrative procedures were not compensable.

Appellant requested a hearing, which was held on March 17, 2004. Appellant testified that at the Step B meeting on December 6, 2001 regarding his grievance he was threatened, belittled and not allowed representation. He testified that he did not submit weekly reports he thought were no longer needed. He also alleged that his supervisor humiliated him before other

employees in August 2002 regarding the Columbia House reports and that he had been working full time at a different office since April 1, 2003. Appellant submitted a March 28, 2004 statement from a coworker that appellant's supervisor was loud and confrontational in unit meetings.

By decision dated July 7, 2004, an Office hearing representative found that the evidence did not establish that appellant sustained an injury in the performance of duty, as no compensable factors of employment had been identified.

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. 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.[1] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[2] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.[3] The handling of disciplinary actions is an administrative function of the employer and not a duty of the employee.[4]

The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. 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 alone of harassment or discrimination are not compensable under the Act.[5]

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

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

[3] *James E. Norris*, 52 ECAB 93 (2000).

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

[5] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[6] The fact that appellant has alleged compensable factors of employment does not establish entitlement to compensation. Appellant must also submit rationalized medical opinion evidence establishing that he or she has an emotional condition that is causally related to the identified compensable employment factors.[7] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors identified by appellant.[8]

ANALYSIS

Appellant claimed compensation for work-related stress, anxiety and depression. His general allegations are vague and not probative as he must submit a detailed description of the specific employment conditions or factors, which he believes caused or adversely affected his condition.[9] Appellant's claim focused on three administrative actions by the employing establishment: the requirement that he use one-half hour for lunch on September 25, 2001, the May 6, 2002 letter of warning for socializing on April 23, 2002 and the September 16, 2002 letter of warning for insubordination for refusing to distribute reports. Appellant alleged that the September 16, 2002 letter of warning constituted harassment and retaliation, but there is no evidence that this disciplinary action was erroneous or abusive. Appellant did not contend that he did not refuse to distribute the Columbia House reports on August 27, 2002 as ordered by his supervisor. Rather, he contends that he was not allowed to have a lawyer present at a September 3, 2002 meeting and that his supervisor humiliated him before other employees on August 27, 2002. However, appellant has not established that he was entitled to have a lawyer present at the September 3, 2002 meeting and has not submitted any corroborating evidence that his supervisor humiliated him before other employees on August 27, 2002. The Board finds that appellant has not established a compensable factor of employment in connection with the events from August 27 to September 16, 2002. The Board finds that appellant also has not established a compensable employment factor regarding the May 6, 2002 letter of warning for socializing. Appellant's grievance of this administrative action was denied and there is no evidence that supports his contention that this letter of warning was in retaliation for contacting the Employee Assistance Program.

The Board further finds that appellant has not shown that the employing establishment erred in requiring him to use one-half hour for lunch on September 25, 2001. Appellant alleged disparate treatment, stating that other employees who attended the same picnic were not required to use lunch time. However, the employing establishment explained that other employees attended only briefly and that the other employee who, like appellant, stayed for a prolonged

[6] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

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

[8] *See supra* note 5.

[9] *Effie O. Morris*, 44 ECAB 470 (1993).

period, also was required to take one-half hour for lunch. Appellant's allegation of abuse at a December 6, 2001 meeting about his grievance on this incident is not supported by the evidence. Ms. Harris acknowledged that at this meeting appellant was told to follow the chain of command and that his failure to do so in the future could lead to corrective action. The evidence is insufficient to find erroneous or abusive. The employing establishment has acknowledged that its response to appellant's October 4, 2001 grievance was late. It attributed this delay to advice from a human resource specialist, who noted that the mangers would be contended by EEO. The evidence of record indicates the employing establishment's failure to decide appellant's October 4, 2001 grievance within the allotted time.

Appellant has not shown error or abuse in the other employing establishment administrative actions he cited. The Board finds that the employing establishment did not act unreasonably in denying appellant's request to wear headphones, in requiring that he submit weekly reports or in instructing him to remove a sign that said "TAKE DEADLY AIM." Appellant has submitted insufficient evidence of his contention that he was required to take lunch within six hours of his starting time while another employee was not.

As appellant has established one compensable factor of employment -- the late response to his October 4, 2001 grievance -- the medical evidence must be reviewed to determine whether this compensable factor contributed to his emotional condition. The medical evidence of record, however, addresses appellant's employment conditions only in a general way. Dr. Petrellis stated that his condition was secondary to "work-related issues." Dr. Tadley attributed appellant's conditions to employment with postal inspection. Dr Viola attributed his depression and anxiety to conflicts in his work assignments.[10] The medical evidence does not attributed appellant's condition to the compensable employment factor found is this case.

CONCLUSION

The Board finds that appellant has established a compensable employment factor, but has failed to establish through probative medical evidence that his emotional condition was caused or aggravated by this employment factor.

[10] The reports from Adina Lambert, M.A. do not constitute probative medical evidence, as this individual is not a "physician" as defined by the Act, as she does not possess a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation and is not listed in a national register of health service providers in psychology, which the Secretary of the Department of Labor deems appropriate. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3 (October 1990) for the Office's requirements to be considered a "clinical psychologist" and therefore a "physician" under the Act.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2004 decision of the Office of Workers' Compensation Programs is modified to reflect that appellant has established one compensable employment factor and affirmed, as modified.

Issued: April 22, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member