United States Department of Labor
Employees' Compensation Appeals Board

JOHN M. LEJAVA, Appellant	)	
and	)	**Docket No. 05-1051**
	)	**Issued: December 8, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
John M. LeJava, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 11, 2005 appellant filed a timely appeal of the January 12, 2005 merit decision of the Office of Workers' Compensation Programs denying his emotional condition claim. 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 has met his burden of proof in establishing an emotional condition in the performance of duty on December 1, 2004.

FACTUAL HISTORY

On December 3, 2004 appellant, a clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 1, 2004 he suffered "stress." Appellant stopped work on December 1, 2004. He sought medical care from Morristown Memorial Hospital the same day with a complaint of "feeling anxious" and was diagnosed with a "stress reaction."

The employing establishment controverted the claim on the basis that the nature of appellant's injury was different from his complaints of chest pains and he failed to indicate that his stress was work related. The employing establishment included a December 6, 2004 letter from Patricia M. Laverty, supervisor of maintenance operations, which set forth events which transpired with appellant on November 29 and December 1, 2004. On November 29, 2004 Ms. Laverty indicated that a predisciplinary interview was held with appellant regarding inappropriate conduct. On December 1, 2004 Ms. Laverty stated that she had a conversation with appellant regarding proper clock rings at approximately 9:20 a.m. When she informed appellant that he failed to make proper clock rings on November 29 and 30, 2004, appellant claimed that she was harassing him. Ms. Laverty indicated that appellant became loud, pointed at her and had asked to see the shop steward. She stated that appellant had left the office once she told him that he was in training and that there would be no overtime for union time, but came back to the office a few minutes later loudly demanding to see a shop steward right then. Ms. Laverty indicated that she attempted to find a shop steward, but none were in the building. At approximately 9:35 a.m., she stated that an ambulance was called after appellant complained of chest pains and stated that he felt like he was having a heart attack. Ms. Laverty noted that appellant was released from the hospital about 11:35 a.m. and was to return to full duty on December 2, 2004, but that he had called in stating that he did not feel well.

In a December 8, 2004 letter, the Office advised appellant that additional factual and medical evidence was necessary to support that an injury had occurred. No additional evidence was received.

By decision dated January 12, 2005, the Office denied the claim on the basis that the factual basis of appellant's claim was unclear or unknown and the medical evidence received was insufficient to establish that he sustained an injury in connection with any factor of his federal employment.[1]

LEGAL PRECEDENT

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[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 an

[1] Following the January 12, 2005 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office with a request for reconsideration to 5 U.S.C. § 8128(a).

[2] *Steven S. Saleh*, 55 ECAB ___ (Docket No. 03-2232, issued December 12, 2003).

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.[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]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as 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 factors of employment and may not be considered.[5] 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.[6] Such opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the employment.[7]

ANALYSIS

Appellant filed a traumatic injury claim alleging that he developed "stress." An employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[8] On his traumatic injury claim form, appellant did not provide any details regarding what took place on December 1, 2004 or provide a description of any incident that caused stress. Appellant's supervisor, Ms. Laverty, noted appellant's comment that he felt harassed during a December 1, 2004 discussion regarding clock rings and that he had stated that he "could not take it anymore" before stating that he felt ill. Appellant failed to provide any description of the employment factor to which he attributed his condition. The December 1, 2004 report from Morristown

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Tina B. Francis*, 56 ECAB ___ (Docket No. 04-965, issued December 16, 2004); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

[8] *See Delphyne L. Glover*, 51 ECAB 146 (1999).

Memorial Hospital failed to identify any employment factor in relation to the diagnosis of a "stress reaction."[9]

Although the Office informed appellant of the deficiencies in his claim in its letter of December 8, 2004, he failed to respond to the request for additional factual and medical information. There is no clear statement from appellant as to the factual basis for his claim. He has failed to establish a *prima facie* claim for compensation. Accordingly, the Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on December 1, 2004.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[9] Until a claimant established a compensable employment factor, it is premature to consider whether medical evidence establishes that a compensable employment factor caused an injury. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).