United States Department of Labor
Employees' Compensation Appeals Board

ROBERT D. ARAGON, Appellant	)	
and	)	**Docket No. 04-2082**
	)	**Issued: February 2, 2005**
U.S. POSTAL SERVICE, PUEBLO MAIN POST OFFICE, Pueblo, CO, Employer	)	

Appearances:
Robert D. Aragon, 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 August 20, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 20, 2004, which denied his claim that he sustained an emotional condition in the performance of duty. 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 sustained an emotional injury in the performance of duty.

FACTUAL HISTORY

On September 5, 2003 appellant, a 49-year-old distribution clerk, filed an occupational disease claim for compensation (Form CA-2), alleging that his emotional condition was a result of his federal employment. He stated that he first became aware of his illness and the fact that it was caused or aggravated by his employment on August 8, 2003. Appellant described the nature of his illness as "severe stress/depression." In a personal statement attached to the Form CA-2, appellant indicated that he was under constant pressure to perform for two supervisors

simultaneously, one in mail processing, the other in customer sales and service. He complained further that he had been asked to work up to 15 hours per day for "18 days straight with no days off and with no clarification as to duty reporting time." Appellant alleged that he had been reassigned to the night shift after being removed from his "bid position" of working days with weekends off. He claimed that the alleged employment conditions caused him "major loss of concentration, depression, annoyance, anxiety, anger … loss of respect!" Appellant stopped working on August 7, 2003 and reported his alleged condition to his supervisor on September 8, 2003.

In conjunction with his Form CA-2 and personal statement, appellant submitted several documents, including a Form CA-20 dated September 5, 2003 and signed by Dr. Christopher Smith, appellant's treating physician.[1]

By letter dated September 16, 2003, the Office notified appellant that the information previously submitted was insufficient for the Office to make a determination. The Office advised appellant to provide additional evidence to support his claim within 30 days from the date of its letter, including a comprehensive medical report from a clinical psychologist or psychiatrist, which described his symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of the treatment; and the doctor's opinion, with medical reasons, on the cause of his condition. The letter specifically advised appellant to provide a detailed description of the employment-related activities which appellant believed contributed to his condition, including the dates, required duties and witnesses and to secure from his physician an explanation as to how exposure or incidents in his federal employment contributed to his alleged condition.

In response to its request, appellant submitted medical evidence, including medical reports dated August 11 and 26 and September 5, 2003, signed by Dr. Smith. Appellant also submitted medical reports dated August 18, 2003, a letter dated October 21, 2003 and notes dated August 25, 2003, signed by Nancy Ryan, LCSW. In his report of August 11, 2003, Dr. Smith stated that appellant was "unable to do any work" due to "severe job stress and depression." In his report dated August 26, 2003, he estimated that appellant would be disabled for approximately three months and recommended psychological counseling. In his attending physician's report dated September 5, 2003, Dr. Smith provided a diagnosis of "depression, job stress." In response to a question whether appellant's condition was causally related to his employment, he checked the "yes" box and stated that appellant's "[two] supervisors expect him to do more than he can do." In a medical report dated August 18, 2003, appellant's therapist diagnosed him as having an "AXIS: I 300.4 dysthymic D/O;" "309.24 Adj D/O = anxiety;" "V62.2 Occupational Prob;" and "AXIS: IV occup." In her letter dated October 21, 2003, Ms. Ryan stated that she engaged in individual therapy with appellant for three months and

[1] It is unclear from the record which documents were submitted in conjunction with the Form CA-2. Documents dated immediately prior to the filing of appellant's claim are date-stamped as having been received subsequent to the filing of his claim. However, the Office states in its letter dated September 16, 2003 that appellant submitted the following documents with his claim form: "copies of request for FMLA, memo[randum] from employer and chart notes from physician and [Form] CA-2 from Dr. Smith." The only documents in the record that are date-stamped prior to September 16, 2003 are the Form CA-2 and appellant's personal statement, both dated September 5, 2003 and date-stamped as received on September 15, 2003.

opined that he suffered from "depression due to work-related stress." She requested that his employer consider dropping the two outstanding disciplinary charges against appellant and stated her opinion that he was "ready to return to work on November 1, 2003."

By letter dated October 1, 2003, the employing establishment challenged appellant's claim. The letter reflected statements from appellant's two supervisors denying that appellant was under strong mental and physical pressure to work two operations. The supervisors affirmatively asserted that appellant did "bid" his then current position and was given specific instructions regarding his duties and when he was to work each operation and that his start time was consistently 4:00 a.m., unless he was scheduled early because he was scheduled to work overtime. The supervisors represented that appellant voluntarily placed himself on the overtime list and could have removed himself at any time. In response to appellant's allegation that his "every move" was being watched, the supervisors reported that their heightened concern for knowing the whereabouts of appellant was warranted in that appellant had been reprimanded for unauthorized absences from his assigned place of work and for copying personal information from a supervisor's desk.

The record reflects a document dated March 5, 2003, signed by appellant and supervisor Eddie De La Tour in which appellant requests that his name be removed from the "Overtime Desired List" effective with the beginning of his next scheduled workday. The document states that "employees who remove themselves from the Overtime Desired List will not be allowed to return their name to the list for the quarter."

The record contains several documents relating to appellant's job assignment, including documents reflecting union negotiations. The record also includes several letters and memorandums documenting disciplinary actions taken against appellant. By letter dated April 29, 1999, appellant received a letter of warning for failure to offer certain services to a "mystery shopper." On July 8, 1999 a grievance resolution was signed by the terms of which the aforementioned letter of warning was withdrawn. By memorandum dated December 30, 1999, appellant received another warning for failure to follow instructions. On July 12, 2001 appellant received a 30-day advance notice of termination for his failure to pass his "assigned scheme" in the prescribed period. The record also contains numerous unsigned notes referencing alleged events and interactions between appellant and the employing establishment.

In a decision dated October 21, 2003, the Office denied appellant's claim for compensation on the grounds that the work incidents cited did not arise in the scope of the performance of appellant's work duties. The Office first found that appellant's allegation that he was under strong mental and physical pressure to work two operations simultaneously with no clarification as to duty reporting time to be noncompensable. Given that the employing establishment contested this claim and appellant did not provide witness statements, the Office considered the allegation "as if it did not occur." In light of the employing establishment's statement that appellant signed up for and was paid overtime, the Office found appellant's complaint regarding his working as a mail handler unloading trucks for up to 15 hours a day for 18 days straight to be noncompensable, in that "frustration over not being able to work in a particular environment is self-generated." The Office found appellant's remaining allegations, including monitoring by supervisors and assignment to the night shift, to be noncompensable in

that they related to administrative functions which are not covered by the Federal Employees' Compensation Act. The Office did not address the medical evidence of record.

In a second narrative statement dated October 29, 2003, appellant responded to questions posed by the Office in its letter of September 16, 2003. In an attempt to clarify his original claim, appellant stated that his duties in mail distribution required him "to meet deadline dispatch times." In support of his assertion that his condition was exacerbated by the work situation, he indicated that there was a shortage of personnel and that his assignment on August 7, 2003 to work in two locations at the same time overwhelmed him. Appellant further stated that he experienced continuous stress, severe depression, nervousness, fear, anger, sadness, anxiety and a plethora of mood changes.

On October 31, 2003 appellant requested an oral hearing, which was held on April 29, 2004. At the hearing appellant elaborated on his complaint, stating that, just prior to the filing of his Form CA-2, his career had come to a complete halt, that he had been pulled from the position he had been awarded because of his seniority and placed in a position as an unassigned regular. Appellant disputed his employer's assertion that he was moved for safety reasons and alleged that he was moved because he was not "getting the help" he was asking for from his coworkers, resulting in customer dissatisfaction. Appellant noted five pages of personal references in the file. Appellant submitted witness statements from two coworkers regarding alleged work-related incidents. In an unsigned letter dated March 30, 2004, Anthony Valdez reported that appellant's supervisor, Dave Locke, urged him to discourage appellant from bidding on a position at Belmont Station and to tell appellant that he was a "hard ass." In a statement dated April 28, 2004, Pat Vigil stated that every time appellant would leave his work area, his supervisor would ask, "Where's Bob?" On one occasion, the supervisor allegedly went into the rest room to verify that appellant was actually in a stall. Appellant stated that for two years he operated without established hours and was being pulled in two different directions. Appellant testified that he left his job on August 8, 2003 and returned to work on November 5, 2003.

By decision dated July 20, 2004, the hearing representative affirmed the Office's decision of October 21, 2003, finding that appellant had not alleged any compensable factors of employment and had therefore not met his burden in establishing that he had sustained an emotional condition in the performance of duty. It was determined that it was not necessary to address the medical evidence of record.

LEGAL PRECEDENT

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage

[2] 5 U.S.C. § 8102(a).

formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[3]

To establish his occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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.[4] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion must be based on a complete factual and medical background of the claimant, 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 employment factors identified by appellant.[5]

Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or special assigned employment duties or to a requirement imposed by the employing establishment, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of appellant's work or his fear and anxiety regarding his ability to carry out his duties.[6] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction in force or frustration from not being permitted to work in a particular environment or to hold a particular position.[7] Similarly, an employee's emotional reaction to his or her failure to receive a job or promotion does not constitute an injury within the meaning of the Act,[8] but rather is considered to be self-generated in that it is not related to assigned duties.[9] Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ___ (Docket No. 04-1257, issued, September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Claudio Vazquez*, 52 ECAB 496, 498 (2001).

[5] *Id.*

[6] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[7] *Id*. *See also Gregory N. Waite*, 46 ECAB 662, 671 (1995).

[8] *Lillian Cutler*, *supra* note 6 at 131.

[9] *Gregorio E. Conde*, 52 ECAB 410, 412 (2001); *see also Roger Smith*, 52 ECAB 468, 473 (2001).

reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.[10]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[11] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[12] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace, as opposed to mere perceptions of the claimant, is to establish a basis in fact for the contentions made, which in turn may be fully examined and evaluated by the Office and the Board.[13] Further, appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[14] A claimant may obtain a hearing to review an adverse decision from the Office by submitting a request within 30 days of the date of the decision.[15] In addition to the evidence of record, the employee may submit new evidence to the hearing representative.[16]

ANALYSIS

Appellant has alleged certain working conditions to be factors in causing his alleged disability and therefore has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment.[17] However, allegations alone are insufficient to establish a factual basis for an emotional condition

[10] *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

[11] *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

[12] *Charles E. McAndrews*, *supra* note 3*; see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence corroborated such allegations).

[13] *Mary J. Summers*, 55 ECAB ___ (Docket No. 04-704, issued September 29, 2004); *see also Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M.E., concurring).

[14] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[15] 20 C.F.R. § 10.616.

[16] 20 C.F.R. § 10.615.

[17] *Roger Williams*, 52 ECAB 468, 472 (2001).

claim.[18] The Board finds that appellant has identified no compensable work factors that are substantiated by the record.

Appellant alleged in his claim and his supplemental statement that his emotional condition was exacerbated by the fact that the agency was short-staffed and that therefore he was subjected to an increased workload. However, because appellant failed to present specific allegations regarding past staffing levels and workload or any corroborative evidence that either the agency was short-staffed or that his workload had been increased, it is impossible for the Board to determine whether the contentions are merely perceptions of the appellant or facts, which in turn could be fully examined and evaluated by the Board.[19]

In his personal statement appellant offered a generalized description of the employment-related activities, which he believed contributed to his condition. Appellant stated that he was under constant pressure to perform for two supervisors simultaneously. He complained of having been asked to work up to 15 hours per day for 18 days straight with no clarification as to duty reporting time and that he had been reassigned to the night shift. However, appellant provided no specific dates and times to document his allegations, with the exception of appellant's assertion in his second personal statement that his assignment on August 7, 2003 to two work locations overwhelmed him. Nor did appellant submit any corroborating evidence. Witness statements submitted at the hearing were related to actions allegedly taken by appellant's supervisors to monitor him and to discourage him from applying for a position. Neither statement corroborated his allegation that he was required to be in two places at the same time or that he was required to work 15-hour days for a period of 18 days straight. Additionally, appellant did not offer any explanation as to why performance of these duties caused him stress. Work duties are not compensable employment factors just because they are work duties. Appellant must establish why the specific duties alleged caused his emotional condition. Furthermore, statements made by appellant's supervisors indicated that appellant voluntarily submitted himself to overtime work and that he was given specific instructions regarding his duties and when he was to work each operation. The record contains a document dated March 5, 2003 signed by appellant and his supervisor requesting that appellant's name be removed from the "Overtime Desired List." This document does not assist appellant. Instead, its existence proves that appellant was on the list prior to March 5, 2003 and there is no additional evidence of record to indicate that he did not elect to be returned to the list at his next opportunity at the end of the quarter. The Board finds that appellant's factual allegations are insufficient to substantiate these claims.

In a merit decision dated July 20, 2004, the hearing representative affirmed the Office's denial of appellant's claim, finding that appellant had alleged no compensable factors of employment. The decision correctly refers to appellant's reactions to various disciplinary issues as administrative matters. Although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee and the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative

[18] *Charles E. McAndrews*, *supra* note 3.

[19] *Mary J. Summers*, *supra* note 13.

capacity.[20] In the instant case, the supervisor's alleged admonishment of and practice of keeping a close watch over appellant were clearly administrative matters about which no allegations of abuse have been made or established. Thus, appellant's emotional reaction to these allegations is not compensable under the Act.

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 but rather is considered to be self-generating.[21] Therefore, appellant's emotional reaction to being required to unload trucks or to work the night shift is not compensable. Moreover, because the factual information presented by appellant does not establish any event or circumstance arising out of the performance of duty, no further review is required. Appellant failed to satisfy the first prong of the three-part requirement to establish his occupational disease claim that he sustained an emotional condition in the performance of duty,[22] to-wit, he failed to submit factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition. Therefore, it is unnecessary to address the medical evidence.[23]

CONCLUSION

Appellant has failed to meet his burden of proof that he sustained an emotional condition in the performance of duty.

[20] *Ernest J. Malagrida*, *supra* note 10 at 288.

[21] *Michael Thomas Plante*, 44 ECAB 510, 516-17 (1993).

[22] *Claudio Vasquez*, *supra* note 4 at 498.

[23] *Roger Williams*, *supra* note 17 at 473; *see also Margaret S. Krzycki*, *supra* note 11 at 502 (noting that, if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed).

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2004 and October 21, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 2, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member