United States Department of Labor
Employees' Compensation Appeals Board

MITCHELL J. MURRAY, Appellant	)	
and	)	**Docket No. 04-1856**
	)	**Issued: March 18, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Savannah, GA, Employer	)	

Appearances:
Mitchell J. Murray, pro se
Office of 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 16, 2004 appellant filed a timely appeal of the June 4, 2004 merit decision of the Office of Workers' Compensation Programs, which denied his claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 21, 1999 appellant, then a 49-year-old former clerk-expediter, filed an occupational disease claim for aggravation of post-traumatic stress disorder.[1] Appellant claimed

[1] Appellant stated that his post-traumatic stress disorder originated in Vietnam in 1967 and 1968.

to have been wrongfully dismissed. He identified May 15, 1999 as the date he first realized his illness was aggravated by his employment.

After approximately 17 years of service, the employing establishment dismissed appellant for cause effective January 21, 1988. Appellant stated that the employing establishment suspended him on numerous occasions and twice attempted to remove him prior to his 1988 dismissal. He alleged that his supervisor, Charles W. Heath, continually provoked and harassed him and that management conspired to remove him because he was outspoken and did not fear authority.

Appellant submitted an arbitrator's decision dated November 7, 1989. The decision included a detailed history of disciplinary actions initiated by the employing establishment dating back to 1983. The arbitrator found that the employing establishment had just cause for dismissing appellant effective January 21, 1988.

In a decision dated November 29, 1999, the Office denied appellant's claim because he failed to file the claim in a timely manner. An Office hearing representative affirmed the decision on July 14, 2000.[2] By decision dated June 14, 2002, the Board reversed the Office's July 14, 2000 and November 29, 1999 decisions.[3]

In a November 29, 2002 statement, appellant described a longstanding history of disagreement with his supervisor, Mr. Heath. He identified eight disciplinary actions taken by Mr. Heath, which appellant characterized as frivolous and unjust. The first incident was a January 7, 1983 14-day suspension for disrespect to a supervisor and insubordination. Appellant stated that the suspension was later reduced to 7 days. The next four incidents involved letters of warning issued on May 9, 1983, December 23, 1984 and January 16 and August 23, 1985. The reported infractions included unacceptable conduct, arguing with a supervisor, failure in the performance of duty and unauthorized use of a telephone. Appellant also identified a February 6, 1986 removal action for insubordination, which was later reduced to a 14-day suspension. The employing establishment also removed appellant on July 31, 1986 for unauthorized absence. The action was later reduced to a 7½ month suspension. The final incident appellant identified was a December 22, 1987 notice of removal for conduct unbecoming a postal employee, which an arbitrator upheld in a November 7, 1989 decision.

By decision dated February 10, 2003, the Office denied appellant's claim. He requested an oral hearing, which was held on June 23, 2003. In a decision dated September 12, 2003, the Office hearing representative found that appellant failed to establish a compensable employment

[2] While the case was pending before the Branch of Hearings & Review, appellant submitted medical records from the Department of Veterans Affairs (DVA), which addressed, among other things, his treatment for post-traumatic stress disorder. Appellant received counseling from Wayne H. Welch, a licensed clinical social worker, and he was also treated by Dr. Virginia A. Villeponteaux, a Board-certified psychiatrist, who diagnosed chronic post-traumatic stress disorder.

[3] Docket No. 00-2406 (issued June 14, 2002). The Board's decision is incorporated herein by reference. The Office requested reconsideration, which the Board denied by order dated September 26, 2002.

factor as the cause of his claimed emotional condition.[4] Accordingly, the hearing representative affirmed the February 10, 2003 decision denying the claim.

Appellant requested reconsideration on December 16, 2003. He submitted, among other things, a March 20, 1987 arbitrator's decision finding that the employing establishment did not have just cause to remove appellant on July 31, 1986. The arbitrator ordered the employing establishment to reinstate appellant. In a decision dated June 4, 2004, the Office denied modification of the hearing representative's September 12, 2003 decision.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.[5]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[6] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[7]

ANALYSIS

Appellant identified eight disciplinary actions between January 7, 1983 and December 22, 1997 as contributing to his claimed emotional condition. Disciplinary actions are an administrative function of the employer.[8] As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees'

[4] Because appellant did not establish a compensable employment factor the hearing representative did not address the relevant medical evidence.

[5] *See Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

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

[7] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[8] *Janice I. Moore*, 53 ECAB 777, 781 (2002); *Bobbie D. Daly*, 53 ECAB 691, 696 (2002).

Compensation Act.[9] However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[10]

According to appellant Mr. Heath was involved in issuing four questionable letters of warning, a 14-day suspension and 3 removal actions. In order for any one of the eight disciplinary actions to fall within the purview of the Act, appellant must demonstrate that the employing establishment acted unreasonably.[11] The fact that a grievance or an equal employment opportunity complaint has been filed is not sufficient by itself to establish error or abuse.[12] Furthermore, absent an admission of fault, a settlement agreement that results in the modification or rescission of a disciplinary action does not establish error or abuse on the part of the employing establishment.[13]

On January 7, 1983 appellant received a 14-day suspension for disrespect to a supervisor and insubordination. The suspension was later reduced to 7 days. The record does not support a finding of error. A subsequent reduction in the severity of the punishment or an outright rescission of the disciplinary action by itself does not establish error or abuse.[14]

With respect to the letters of warning issued on May 9, 1983, December 23, 1984 and January 16 and August 23, 1985, appellant has not demonstrated error or abuse on the part of the employing establishment. He was cited for a number of infractions, which included unacceptable conduct, arguing with a supervisor, failure in the performance of duty and unauthorized use of a telephone. The record does not establish that the employing establishment's actions regarding the four letters of warning were either abusive or erroneous.

Appellant also identified a February 6, 1986 removal action for insubordination, which was later reduced to a 14-day suspension. Again, the mere reduction of the severity of the punishment does not by itself establish that the employing establishment's initial disciplinary action was either abusive or erroneous.[15] The record does not establish either error or abuse on the part of the employing establishment in its attempt to remove appellant from service on February 6, 1986. Similarly, appellant failed to establish that the employing establishment's December 22, 1987 notice of removal was improper or abusive. The employing establishment properly considered appellant's objections to the proposed dismissal and subsequently removed him from service effective January 21, 1988. Appellant's grievance was denied on February 3

[9] *Ruthie M. Evans, supra* note 7.

[10] *Id.*

[11] *Janice I. Moore, supra* note 8.

[12] *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

[13] *Id.*; *Kim Nguyen*, 53 ECAB 127, 128 (2001).

[14] *Paul L. Stewart*, 54 ECAB ___ (Docket No. 03-1107, issued September 23, 2003); *Mary L. Brooks*, 46 ECAB 266, 274 (1994).

[15] *Paul L. Stewart, supra* note 14.

and April 15, 1988 and an arbitrator reviewed the removal action and in a decision dated November 7, 1989, found that there was just cause for dismissing appellant. Accordingly, appellant failed to establish that the employing establishment's January 21, 1988 removal was either erroneous or abusive.

The Board, however, finds that the July 31, 1986 removal action represents a compensable factor of employment. This action was premised on appellant's alleged failure to be gainfully employed and his unauthorized absence from assigned duties. It was later reduced to a 7½ month suspension without pay. However, unlike other instances where the reduction of appellant's punishment was unaccompanied by an admission of fault or evidence of error, the July 31, 1986 removal was overturned by an arbitrator, who specifically found in a March 20, 1987 decision, that the employing establishment did not substantiate one of the two charges and, therefore, removal was too severe a penalty. The arbitrator concluded that the employing establishment did not have just cause to remove appellant on July 31, 1986 and directed appellant's reinstatement.

The arbitrator's March 20, 1987 decision is sufficient evidence of error on the part of the employing establishment such that the July 31, 1986 removal action falls under the purview of the Act.[16] However, appellant's burden of proof is not discharged merely by establishing a compensable factor of employment. He must also submit rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.[17] Appellant's psychiatrist, Dr. Villeponteaux, did not attribute his chronic post-traumatic stress disorder to the July 31, 1986 removal. Thus, the evidence fails to establish a medical condition causally related to the July 31, 1986 employment factor.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

[16] *Dennis J. Balogh*, 52 ECAB 232, 238 (2001). The findings of other federal agencies or bodies are not dispositive with regard to questions arising under the Act. However, such evidence may be given weight by the Office and the Board. *See Ernest J. Malagrida*, 51 ECAB 287 (2000); *Richard L. Ballard*, 44 ECAB 146 (1992).

[17] *See Kathleen D. Walker*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 18, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member