United States Department of Labor
Employees' Compensation Appeals Board

CHARLES D. GREGORY, Appellant	)	
and	)	**Docket No. 05-252**
	)	**Issued: January 18, 2006**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Amarillo, TX, Employer	)	

Appearances:
Charles Westmoreland, for appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 5, 2004 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated January 16, April 13 and October 19, 2004, that denied his emotional condition claim. 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 sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 12, 2003 appellant, then a 44-year-old mail processing clerk, filed an occupational disease claim for work-related mental health problems. Appellant noted that he was the clerk craft director for the local American Postal Workers' Union, which won a $1.2 million dollar settlement to grievances brought by postal workers. Appellant contended that managers at the employing establishment had harassed him and the employees he represented.

Appellant alleged that, after he distributed the proceeds of the settlement, certain managers wrote a letter to the president of the local union asking that appellant be removed from his office. The record reflects that appellant stopped work on April 21, 2003, used advanced leave until July 11, 2003 and claimed compensation beginning July 12, 2003.

In letters dated June 16 and 25, 2003, Michael Melendrez, appellant's supervisor and the manager of distribution operations, stated: "Over the past year, [appellant] has spent the majority of his time on the clock working in a union capacity. Over the past year, he has spent little time performing the duties of his actual bid job." From April to December 2002, appellant was on a change of schedule working on union business on Tour 2. After this change of schedule expired, appellant returned to Tour 3. Management subsequently denied appellant's request to change his schedule back to Tour 2. Mr. Melendrez denied appellant's allegations of harassment. He noted that appellant complained about a January 13, 2003 letter sent by certain managers to the president of the local union and enclosed a copy. This letter was from five individual managers who were former members of the local union. They expressed concern over the manner in which appellant, on behalf of the union, distributed the money from a recent financial settlement. They indicated that they had been postal clerks and dues paying members of the union at the time of the lawsuit, but had not received part of the financial settlement because they had since been promoted to management. They requested that the local union's executive committee or the membership at large review and overturn appellant's decision.

In a June 28, 2003 letter, appellant noted that in July 1996, he became a steward on Tour 3, a position he still held. At the end of 1996, he was elected clerk craft director for the local union, a position he still held. Appellant indicated that the collective bargaining agreement between the union and the employing establishment allowed stewards time to process and investigate grievances, when the immediate supervisor authorizes them to leave the work area to file grievances and that he had been on steward time for over two years. Appellant stated that, by filing complaints, he was able to handle management "bs" until he received a copy of the January 13, 2003 letter. Appellant stated that soon after the letter was issued, he began to experience headaches, tension and stomach problems. He contended that Mr. Melendrez was attempting to cause harm by commenting on appellant's claim for compensation. In a July 23, 2003 letter, to the employing establishment, appellant requested a transfer to the maintenance craft. Appellant complained that the only pay he received since he stopped work on April 21, 2003 was 88 hours of sick leave. In an August 30, 2003 statement he contended that the employing establishment's inability to pay him correctly resulted in further anxiety and depression.

In a July 7, 2003 report, Dr. Brenda Meeks, Ph.D., a clinical psychologist, stated that appellant initiated psychotherapy on April 30, 2003. She diagnosed a generalized anxiety disorder and noted that psychological testing revealed that appellant was "preoccupied with psychological issues, both personal and social, and is likely to overreact to difficulties and frequently complain excessively about frustrations and stressors, particularly work-related issues." In a July 17, 2003 report, on an Office form, Dr. Meeks checked a box to indicate this condition was caused or aggravated by an employment activity. In a July 17, 2003 report on an Office form Dr. Bill Byrd, a Board-certified internist, indicated that appellant's generalized anxiety disorder was related to stress at work, but that appellant was not totally disabled. In an October 8, 2003 report, Dr. Meeks indicated that appellant was totally disabled from April 21 to

October 10, 2003 and that he could return to his regular work with no restrictions. In treatment notes Dr. Byrd stated on May 1, 2003 that appellant's job was overwhelming and listed an impression of burnout. On December 17, 2003 he stated that appellant was quite unhappy at work and had a very adversarial relationship with management.

By decision dated January 16, 2004, the Office found that appellant had not established his allegations of harassment, that the January 13, 2003 letter was not a compensable factor of employment and that the evidence failed to establish he sustained an emotional condition as alleged.

On February 12, 2004 appellant requested reconsideration, stating that for at least the past two years all he had done was process grievances 40 hours per week. In a February 23, 2004 letter, appellant stated that he had experienced minimal problems since working a bid assignment and that his problems were related to his union activities. Appellant submitted a copy of the collective bargaining agreement, which noted that stewards were allowed reasonable time on the clock to process grievances and that payment for time actually spent in grievance handling was at a straight time rate, provided the time spent was part of the steward's regular workday. He also submitted a copy of a charge against the employer he filed with the National Labor Relations Board on February 2, 2004, alleging that the employing establishment had harassed him because of his union activities and because he filed unfair labor practice charges.

By decision dated April 13, 2004, the Office denied modification of the January 16, 2004 decision. The Office again found that appellant failed to establish any compensable employment facts and that the medical evidence did not support causal relationship.

On April 13, 2004 appellant requested reconsideration. He submitted the January 17, 2003 letter from Phil Shorten, III, the president of the local union, who responded to the January 13, 2003 letter of the managers. He noted that the employees who wrote the January 13, 2003 letter had forfeited any claim under the collective bargaining agreement when they became managers. A February 17, 2004 Step 2 decision denied appellant's grievance contending that his mental disability was not accommodated during his absence from work from April 21 to November 13, 2003. In a May 10, 2004 letter, appellant complained that he was not offered a job during his absence from work from April to October 2003 and that he was subjected to harassment and a hostile work environment.

By decision dated October 19, 2004, the Office denied appellant's claim, finding that his injury did not arise while in the performance of duty.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty. The phrase "sustained while in the performance of his duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment." "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be

engaged in the employer's business, at a place where he may reasonably be expected to be in connection with his employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must establish the concurrent requirement of an injury "arising out of the employment." "Arising out of employment" requires that a factor of employment caused the injury.[1]

With respect to whether union activities are related to employment, the general rule is that union activities are personal in nature and are not considered to be within the course of employment.[2] The Board has recognized an exception to the general rule: employees performing representational functions which entitle them to official time are in the performance of duty and entitled to all benefits of the Act if injured in the performance of those functions. The underlying rationale for this exception is that an activity undertaken by an employee in the capacity of union office may simultaneously serve the interests of the employer.[3] The Office's procedure manual recognizes this exception, stating that: "Employees performing representational functions which entitle them to official time are in the performance of duty and entitled to all benefits of the Act if injured in the performance of those functions. Activities relating to the internal business of a labor organization, such as soliciting new members or collecting dues, are not included."[4] The procedure manual states that "representational functions" include "authorized activities undertaken by employees on behalf of other employees pursuant to such employees' right to representation under statute, regulation, executive order or terms of a collective bargaining agreement."[5] It also states:

> "When an employee claims to have been injured while performing representational functions, an inquiry should be made to the official superior to determine whether the employee had been granted 'official time' or, in emergency cases, would have been granted official time if there had been time to request it. If so, the claimant should be considered to have been in the performance of duty. This includes [employing establishment] employees who are 'on the clock' while performing representational activities under the National Agreement."[6]

ANALYSIS

In the present case, appellant has not attributed his emotional condition to any of the regular or specially assigned duties of his position as a mail handler. Rather, he claimed that he sustained an emotional condition while performing union activities. In June 16 and August 11, 2003 letters, the employing establishment acknowledged that appellant, during at least the past

[1] *Ray C. Van Tassell, Jr.*, 44 ECAB 316 (1992).

[2] *Jimmy E. Norred*, 36 ECAB 726 (1985); *Larry D. Passalacqua*, 32 ECAB 1859 (1981).

[3] *Marie Boylan*, 45 ECAB 338 (1994).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.16d (July 1997).

[5] *Id.* at Chapter 2.804.16b (March 1994).

[6] *Id.* at Chapter 2.804.16e (July 1997).

year, had spent little time performing the regular duties of his bid position as a mail handler and had devoted essentially all his time to union activities. Although appellant has contended that he was harassed and subjected to a hostile work environment because of his union activities, he did not describe any specific incidents of harassment. Where an employee fails to identify specific employment factors he believes are responsible for his condition, he does not meet his burden of proof in establishing his claim for compensation. Such failure prevents the Office from performing its adjudicatory function of determining the truth of the allegations and whether the factors that caused his condition arose within the coverage of the Act.[7]

Appellant cited only one specific incident -- a January 13, 2003 letter from five employing establishment managers to the local union president.[8] The January 13, 2003 letter was generated by certain managers who were former members of the bargaining unit. They contended that they were entitled to share in the proceeds of a settlement obtained by the union because they had been dues paying union members at the time of the improper use of casual employees that resulted in the settlement. In writing the letter, they expressed disagreement with appellant's decision to exclude them from the financial settlement.

The Office's Federal (FECA) Procedure Manual describes those instances pertaining to representational functions in which certain authorized activities by employee representatives of bargaining units are said to benefit both the employee and the employer such that an injury will be deemed as arising in the performance of duty.[9] Activities related to the internal business of a labor organization, such as soliciting new members or collecting dues, are not deemed as giving rise to the performance of duty.[10]

The Board finds that appellant has established a compensable factor of employment. The record supports that he was acting in a representational function involving grievances against the employer. As the result of a settlement of certain grievances pertaining to the use of casual employees, the union obtained a financial settlement and the proceeds were distributed by appellant to then members of the bargaining unit. In this capacity, the Board finds that he is in the performance of duty.

Appellant's burden of proof is not discharged 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 accepted employment factor.[11] The medical evidence submitted by appellant is not sufficient to establish causal relationship. The reports of Dr. Meeks and Dr. Byrd diagnosed a generalized anxiety disorder, but did not relate this condition to appellant's representational function in allocating the proceeds of the financial settlement to members of the bargaining unit. The reports noted, generally, that appellant related

[7] *Samuel F. Mangin, Jr.*, 42 ECAB 671 (1991).

[8] Perusal of this letter does not corroborate appellant's contention that it asked that he be removed from office.

[9] Federal (FECA) Procedure Manual, Chapter 2 -- Claims, *Performance of Duty*, Chapter 2.804.16 (March 2005).

[10] *Id*. at Chapter 2.804.16(d).

[11] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

his anxiety symptoms to work-related stressors, without an attempt to specifically identify the origin of such stress in the work place or distinguish it from other life stressors that persisted during his treatment. The medical evidence is insufficient to meet appellant's burden of proof in this case.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment. However, the medical evidence is not sufficient to establish his emotional condition as causally related or aggravated by his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 19, April 13 and January 16, 2004 decisions of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: January 18, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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