

**United States Department of Labor
Employees' Compensation Appeals Board**

BILLY M. BECKER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 06-902
Issued: July 5, 2006**

Appearances:
Billy M. Becker, pro se
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 March 9, 2006 appellant filed a timely appeal of a January 23, 2006 merit decision of the Office of Workers' Compensation Programs, denying his claim for compensation. 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 has established an emotional or physical condition causally related to compensable work factors.

FACTUAL HISTORY

On February 9, 2004 appellant, then a 56-year-old letter carrier, filed an occupational claim (Form CA-2) alleging that he sustained stress from "increased demands and workload." Appellant described the nature of his condition as Prinzmetals' angina. In a narrative statement, appellant reported that he was subject to increased workloads and added demands at the employing establishment without having additional time to complete the tasks. He also noted

that he had been bitten by a dog in the performance of duty in September 2002,¹ and was involved in a “prolonged hassle” with the homeowner’s insurance company. In addition, appellant stated that he had difficulty receiving leave in 2002 when his father was ill.

The employing establishment submitted an investigative memorandum from a postal inspector dated March 2, 2004. The postal inspector stated that an analysis of mail volume in the year prior to the filing of the claim disclosed a consistent level of mail volume for the year. A graph of mail volume from March 2003 to February 2004 was submitted. The postal inspector also reported that appellant worked less overtime in 2003 than in 2002.

Appellant submitted a response on March 22, 2004, stating that his route had changed since 1996. He stated that mail had to be scanned, that he had more certified and delivery confirmation letters and additional deliveries. Appellant reported that his father became ill in early 2002 and his request for Family Medical Leave Act (FMLA) leave was denied. He again discussed the dog bite claim, noting that he had to file a complaint in small claims court against the homeowner and still had not recovered any money.

In a letter dated March 31, 2004, a supervisor, Don Bowe, stated that a 1998 route inspection recorded 300 possible total deliveries, 290 of which were vehicle deliveries, and a 2004 inspection showed 323 possible deliveries, 301 of which were vehicle deliveries. The supervisor indicated that scanning mail required only the pushing of two to four buttons. Mr. Bowe stated that appellant had not been harassed or pushed to perform his work faster, and never indicated to the current management that he felt stressed or overworked. In an April 9, 2004 letter, an employing establishment human resources specialist stated that appellant had sent the proper FMLA paperwork, but appellant had failed to properly complete the requested forms.

By decision dated April 16, 2004, the Office denied appellant’s claim for compensation. The Office found that appellant had not established a compensable work factor as contributing to a diagnosed condition.

Appellant requested reconsideration of his claim. He submitted a small claims judgment and other evidence regarding his attempts to recover from the homeowner in the dog bite case. The record contains a December 2, 2004 notice of suspension for failure to perform duties in a satisfactory manner on November 18, 2004. Appellant also submitted documents from November 1996 labeled “Carrier’s Count of Mail-Letter Carrier’s Routes.” In a letter dated February 16, 2005, appellant stated that his route had been adjusted in 1996 due to excessive workload. He argued that the mail volume count showed that only during the week of December 30, 2003 was his route at an eight-hour volume. Appellant alleged that management harasses carriers and stated that Mr. Bowe’s numbers were incorrect.

By decision dated January 23, 2006, the Office denied modification of the prior decision, finding that appellant had not established a compensable work factor.

¹ The Office indicated that appellant had a separate claim for this injury.

LEGAL PRECEDENT

To establish a claim that he sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

The Board has held that 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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.³

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 reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁴

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, 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.⁵ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁶

ANALYSIS

Appellant's primary allegation in this case is that he suffered stress and resulting angina due to an increased workload. A heavy workload may be a compensable work factor, if there

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Id.*

⁵ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

must be probative and reliable evidence to support the allegation.⁷ In this case the evidence of record does not establish an increasing workload as a compensable work factor. The employing establishment indicated that mail volume had not increased significantly, nor had the number of deliveries on the route. The mail volume information did not show a consistent increase. Despite appellant's allegations, there is no probative evidence showing that appellant's workload had increased to the point where it was excessive and would establish a compensable work factor. He did not provide any evidence that his route had an excessive workload or otherwise support his allegation. Accordingly, the Board finds that appellant has not established a compensable work factor regarding overwork.

The allegations relating to a denial of leave and disciplinary actions are administrative or personnel actions. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁸ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁹

No evidence was presented as to error or abuse by the employing establishment. Appellant indicated in a December 7, 2004 letter that he wished to file a grievance, but the record contains no evidence of error in the denial of leave, the issuance of a notice of suspension, or other administrative action.

Another area of concern raised by appellant was stress from his attempts to secure recovery from a homeowner in a September 2002 dog bite. Appellant filed a claim regarding the dog bite; to the extent that he is claiming a consequential injury, this would be pursued through the dog bite claim. The allegation regarding the interaction with the homeowners insurance company do not relate to appellant's regular or specially assigned duties and would not be compensable work factors.

Finally, appellant did raise a general allegation of harassment by the employing establishment. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁰ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.¹¹ In this case there was no evidence of harassment submitted. Appellant did not submit any findings of harassment by an administrative agency or other probative evidence to support the

⁷ *Bobbie D. Daly*, 53 ECAB 691 (2002); *Sherry L. McFall*, 51 ECAB 436 (2000).

⁸ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁹ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹⁰ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹¹ *Helen P. Allen*, 47 ECAB 141 (1995).

allegation. Accordingly, the Board finds that appellant did not allege and substantiate a compensable work factor in the instant case.

CONCLUSION

Appellant did not allege and substantiate a compensable work factor and therefore he has not met his burden of proof to establish an employment-related emotional or physical condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2006 is affirmed.

Issued: July 5, 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