United States Department of Labor
Employees' Compensation Appeals Board

STEVEN J. REAVIS, Appellant	)	
and	)	**Docket No. 06-419**
	)	**Issued: May 4, 2006**
U.S. POSTAL SERVICE, NORTHEAST ANNEX, Springfield, IL, Employer	)	

Appearances:
Steven J. Reavis, 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 December 12, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 19, 2005 denying 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 condition in the performance of duty on April 25, 2005.

FACTUAL HISTORY

On July 14, 2005 appellant, a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging an emotional condition as a result of his federal employment. Appellant

claimed that on April 25, 2005 he was harassed by supervisors Mike Holland and Dave Donnelly and suffered "intentional infliction of emotional stress."[1]

On August 1, 2005 the Office informed appellant that the information submitted was insufficient to establish his claim and advised him to provide additional evidence, including details of the alleged April 25, 2005 work-related incident and a medical report from his treating physician describing symptoms and providing a diagnosis and opinion with medical reasons as to the cause of his condition.

The record contains notices of seven-day suspensions issued on December 16, 2004 for failure to maintain a regular work schedule and on April 25, 2005 for failure to follow instructions.

In an April 2, 2005 statement, appellant alleged that he was "scrutinized" by his supervisors from 1997 to the present and that he had filed approximately four Equal Employment Opportunity (EEO) complaints. He stated that on March 8, 2005 he removed his name from the overtime list at the request of Mr. Holland and that he was consequently "shorted" 80 hours of pay.

By letter dated March 19, 2005, the employing establishment notified appellant that he had failed to properly submit medical documentation regarding his absences, and that he would be considered absent without leave if he failed to submit proper documentation within five days. The record also contains a February 22, 2003 letter of warning for unscheduled absences.

In an April 21, 2005 letter, Dr. Anne B. Morgan, Ph.D, a licensed clinical psychologist, reported that she treated appellant on that date for work-related stress. She provided a diagnosis of "adjustment reaction." She indicated that appellant's anticipated return to work date was April 25, 2005. In an April 27, 2005 note, Dr. Michael Comerford, a Board-certified internist, indicated that he had seen appellant on that date for "depression stemming from adjustment reaction incurred from incident at his place of work." In an April 27, 2005 report, Dr. Comerford related that he had seen appellant for depression and anxiety. Appellant informed him of multiple stressors over the past 9 to 12 months, including difficulties in the workplace and his brother's death. Appellant related a specific incident that occurred after a leave of absence taken when his supervisors asked him to perform an alternative mail route.

Appellant submitted a statement dated April 28, 2005 containing allegations against his supervisors from April 20 through 25, 2005, as follows:

> 1. Appellant claimed that on April 20, 2005 Mr. Holland told him to case route 234. After appellant indicated that he had to "go through his red book" and failed to comply with the instructions, Mr. Holland brought the station manager, Mr. Donnelly, to appellant's workstation. When Mr. Donnelly told appellant to case route 234, appellant told him that he was not "on the list to help anybody else." Appellant alleged that Mr. Donnelly stated, "I just told you what to do …

[1] The record contains a portion of a decision dated May 23, 2005 denying a claim for a March 8, 2005 injury.

last time." He also claimed that Mr. Donnelly said, "If [Mr. Holland] tells you to do something, you are to do it … I don't want to have to come over here again."

2. Appellant alleged that he, then, began casing mail on route 234, but that he was sweating and unable to concentrate. He felt that Mr. Holland had forced him off the overtime list and was now forcing him to work another route while the employees on the overtime list socialized. Because he felt anxious and shaky, he handed a sick leave form to Mr. Holland and told him he was going home. Mr. Holland informed appellant that he would need medical documentation of his illness.

3. Appellant stated that he visited his psychologist, Dr. Morgan, on April 21, 2005.

4. On April 25, 2005 appellant returned to work. He alleged that he was "taken upstairs" four times for disciplinary reasons on that date, including a predisciplinary discussion with Mr. Holland for failure to follow instructions on April 20, 2005 and a seven-day suspension notice. Appellant further alleged that Mr. Holland refused to allow him to visit the company doctor, informing him that it was unnecessary and that he had created his own stress.

Appellant submitted a March 24, 2005 note from Dr. Morgan, reflecting that he was experiencing normal grief reaction due to his brother's death and that he had no diagnosable psychiatric disorder. In an unsigned statement dated March 12, 2005, appellant alleged that Mr. Holland had harassed him on March 8, 2005 about working overtime. He indicated that, for a period of time, he had been unable to work overtime due to his wife's recent knee surgery and that he was sick on that date. Appellant claimed that Mr. Holland asked for medical documentation of his illness. He became ill as a result of his conversation with Mr. Holland, handed him a sick leave slip and advised that he was going home. Mr. Holland allegedly "hollered" at appellant as he was walking away, telling him that he needed to obtain medical documentation for his illness.

In a narrative statement dated December 28, 2004, appellant indicated that he had been susceptible to illness since July 31, 2005 when he experienced a strep infection. He worked 18 out of 52 of his scheduled days off during 2004 and only called in sick when he was too weak to work. Appellant believed he was being harassed for conditions beyond his control.

In an undated statement received on July 18, 2005, Steve Burwell, a union representative, stated that appellant was reprimanded on April 25, 2005 for being belligerent. Mr. Burwell indicated that he heard Mr. Donnelly tell appellant to leave the employing establishment because appellant had stated that he was stressed out. Appellant had failed to provide a letter from his physician indicating that he was not a threat to himself or others. In a May 2, 2005 note, Dr. Comerford stated his belief that appellant was capable of returning to his occupation with no physical restrictions.

In a statement dated August 30, 2005, Mr. Holland stated that on April 25, 2005 appellant was asked to attend a predisciplinary interview regarding his refusal to follow instructions or to

obtain medical documentation on April 20, 2005. Appellant was also called for an informal job discussion in which appellant was instructed not to behave in a belligerent manner and for the issuance of a notice of seven-day suspension, due to his inability to provide a valid reason for his refusal to follow instructions. Mr. Holland indicated that appellant was released to work, awaiting approval by his physician, because the correspondence originally provided by appellant failed to state that he was not a threat to himself or others.

Appellant submitted a "Step B Decision" reflecting a resolution of his grievance regarding mandatory overtime. The record contains a July 26, 2005 notice of seven-day suspension for failure to maintain a regular work schedule. An August 18, 2005 note from Dr. Comerford reflected "episodic exacerbation of stress[-]related illness due to perceived harassment by supervisors in the workplace."

Appellant submitted a narrative statement dated September 7, 2005. He indicated that he had been under a great deal of stress due to previous harassment by his managers. He had filed an EEO complaint and, on August 24, 2005, Mr. Holland followed him and reprimanded him for exceeding his allotted street time. In a March 8, 2005 statement, appellant alleged that Mr. Holland told him to remove his name from the overtime list and did so in order to harass appellant.

By decision dated September 19, 2005, the Office denied appellant's claim for compensation, finding that he had established no compensable factors of employment.

LEGAL PRECEDENT

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 the 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 his 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.[2] The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his 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 a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[4] 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

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Id*. *See also Peter D. Butt, Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

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.[5]

The Board has recognized the compensability of verbal altercations or abuse in certain circumstances; however, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[6] For harassment or discrimination to give rise to a compensable disability, there must be evidence that the alleged actions did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.[7] When an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO Commission standards. Rather, the issue is whether sufficient evidence has been submitted to factually support the claimant's allegations.[8]

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.[9] When the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[10] 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.[11]

A claimant 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.[12] Neither the mere fact that a disease or condition manifests itself during a period of employment

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[5] *See Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004); *see also Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

[6] *See Charles D. Edwards, supra* note 5.

[7] *See Peter D. Butt, Jr., supra* note 4.

[8] *Id.*

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

[10] *See Charles D. Edwards, supra* note 5.

[11] *Charles E. McAndrews*, 55 ECAB ___ (Docket No. 04-1257, issued September 10, 2004); *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).

[12] *See Charles D. Edwards, supra* note 5.

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[13]

ANALYSIS

The Board finds that appellant has not established any compensable employment factors of employment under the Act.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[14] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[15] In the present case, appellant's allegations of harassment were vague, and he has not submitted sufficient evidence to establish his claim.[16] Appellant alleged that he was harassed by supervisors Holland and Donnelly. In an April 2, 2005 statement, he claimed that he had been scrutinized by his supervisors since 1997 and that he had filed several EEO complaints. He submitted no corroborating evidence to substantiate these general allegations of harassment. Appellant's allegations that he was harassed by his supervisors are insufficient to establish that harassment did, in fact, occur. His description of exchanges with Mr. Holland and Mr. Donnelly cannot be characterized as either verbal altercations or abuse. Appellant has not identified any words, actions or gestures used by his managers to support abuse on their part. On the contrary, accepting his allegations as true, the statements made to appellant by his supervisors were reasonable and within the scope of their administrative functions. Thus, appellant has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment.

The record reflects that appellant filed several EEO complaints. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[17] Where an employee alleges discrimination and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under EEO Commission standards. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[18] In the instant case, there was no finding of discrimination, error or abuse on

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

[14] *See Lori A. Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004). *See also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[15] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[16] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[17] *See James E. Norris*, 52 ECAB 93 (2000). *See also Parley A. Clement*, 48 ECAB 302 (1997).

[18] *See James E. Norris, supra* note 17. *See also Michael Ewanichak*, 48 ECAB 354 (1997);

the part of the employing establishment. Rather, the parties entered into a mediated settlement, resolving the issue without admission of wrongdoing on the part of either party.

In the present case, appellant has not attributed his emotional condition to the performance of his regular duties or to any special work requirement arising from his employment duties under *Cutler*, nor has appellant implicated his workload as having caused or contributed to his emotional condition.

The Board finds that appellant's allegations that his supervisor wrongly assigned him to case mail on an undesired route, improperly disciplined him on April 25, 2005, incorrectly required him to remove his name from the overtime list, and otherwise unfairly disciplined him or regulated his work assignments, relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[19] Although the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[20] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[21] However, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. Appellant was resentful of his forced removal from the overtime list and felt that he deserved special consideration due to his wife's knee surgery and his own illness. The Board finds that the employing establishment's action in removing appellant from the overtime list after he repeatedly refused to work as requested, was reasonable under the circumstances. The Board also finds that Mr. Donnelly's actions on April 25, 2005 did not constitute error or abuse. The record reflects that appellant was reprimanded for being belligerent and was asked to leave the employing establishment premises after he told his supervisors that he was stressed out. The record also indicates that appellant failed to provide proper medical documentation establishing that he was not a danger to himself or others. The Board finds that the supervisor's actions were reasonable under the circumstances. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant indicated that he felt that Mr. Holland had forced him off the overtime list and required him to work another route while overtime employees socialized. He felt he was being harassed for conditions beyond his control, including his susceptibility to illness. However, the Board finds that appellant's emotional reaction must be considered self-generated, in that it resulted from his perceptions regarding his supervisor's actions.[22] Moreover, appellant's

[19] *See Lori A. Facey, supra* note 14. *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[20] *Id.*

[21] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[22] *See David S. Lee*, 56 ECAB ___ (Docket No. 04-2133, issued June 20, 2005).

frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.[23]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[24]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 19, 2005 is affirmed.

Issued: May 4, 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

[23] *See Cyndia R. Harrill*, 55 ECAB ___ (Docket No. 04-399, issued May 7, 2004).

[24] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 9.