United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 06-1632**
	)	**Issued: November 30, 2006**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Memphis, TN, Employer	)	

Appearances:
John Hershberger, Esq., for the 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 11, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 7, 2006 merit decision denying his emotional condition claim and the Office's May 10, 2006 decision denying his request for a review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On November 3, 2005 appellant, then a 36-year-old maintenance supervisor, filed a claim alleging that he sustained an employment-related emotional condition on that date.[1] Appellant alleged that on November 3, 2005 his supervisors, Kenneth Gourdine and Andrew Cuccia, retaliated against him by refusing to comply with an October 11, 2005 final decision of the Chief Administrative Law Judge, a judicial officer for the employing establishment. He asserted that Mr. Gourdine advised him in writing that up to 20 percent of his pay would be involuntarily taken away beginning December 2, 2005. Appellant alleged that management misinformed him about his rights and falsified documents which were submitted in connection with his claims and grievances regarding the collection of the debt.

Appellant submitted an October 11, 2005 final decision under the Debt Collection Act of 1982 issued by Bruce R. Houston, Chief Administrative Law Judge for the employing establishment. The decision provided that the employing establishment could not collect money from appellant's salary "on account of the debt alleged in this case." Judge Houston indicated that appellant's petition was granted because the employing establishment did not respond to the petition.

The record also contains an October 11, 2005 letter in which Mr. Gourdine stated that appellant had previously been advised that he owed the employing establishment $727.73 due to an overpayment which was caused by payment for 40 hours of work, including 23.74 hours of night differential pay and 8 hours of Sunday premium pay. Mr. Gourdine indicated that the amount would be recovered by collecting 15 percent of appellant's disposable pay each pay period or 20 percent of his gross pay each pay period, whichever amount was lower when the salary offset was started.[2]

Appellant submitted a November 9, 2005 report of Dr. Antoine Jean-Pierre, an attending Board-certified psychiatrist, who indicated that appellant was under "extreme stress and duress" at work and was not able to concentrate on any task. He recommended that appellant take a month's leave of absence to recuperate.

By letter dated December 15, 2005, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted a December 27, 2005 statement in which he further described his claimed stressors. He indicated that on November 9, 2005 he asked Mr. Cuccia whether he told the plant manager about the final decision of the Chief Administrative Law Judge and asserted

[1] On July 11, 2006 appellant also filed an appeal with the Board in connection with a separate emotional condition claim (file number 062139980). That appeal was docketed as No. 06-1633.

[2] The record also contains a statement dated October 31, 2005, indicating that appellant owed the employing establishment $727.73.

that Mr. Cuccia told him that management agreed that the money could be taken from him and that he should "stop complaining."[3] Appellant claimed that management called him a liar and wrongly indicated that he was not able to work without supervision.

Appellant submitted a December 6, 2005 order in which Judge Houston described his October 11, 2005 decision and stated:

> "Petitioner now complains, in a letter received here on December 5, 2005, that his supervisors have told him they intend to go forward with collection of the alleged debt. A final decision is binding on both parties. Compliance with it is not optional."

Appellant also submitted several reports of Dr. Jean-Pierre dated between early 2004 and mid 2005, *i.e.*, a period prior to the time of the emotional condition alleged in the present case. Some of these reports referred to appellant's fear of working with a particular employee and his claim that management assigned him certain tasks as punishment, but he has not alleged in the present case that he sustained an emotional condition due to such stressors.[4]

By decision dated March 7, 2006, the Office denied appellant's emotional condition claim. The Office found that appellant established an employment factor in form of the employing establishment's refusal to comply with the decision of Judge Houston, which indicated that the employing establishment could not collect a debt from appellant's wages.[5] The Office further determined that appellant did not submit sufficient medical evidence to show that he sustained an emotional condition due to the accepted employment factor.

On April 12, 2006 appellant requested a review of the written record by an Office hearing representative.[6]

By decision dated May 10, 2006, the Office denied appellant's request for a review of the written record by an Office hearing representative. The Office indicated that appellant's request was denied as a matter of right because it was untimely; it noted that it had exercised its discretion and denied appellant's request for the further reason that his claim could equally well be addressed by submitting relevant medical evidence and requesting reconsideration.

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[3] Appellant submitted documents regarding an Equal Employment Opportunity Commission claim he filed in connection with this matter.

[4] Appellant submitted October 2003 reports of Dr. Michelle A. Shelton, an attending Board-certified family practitioner and a November 2003 report of Dr. Ashok B. Rao, an attending Board-certified psychiatrist. He also submitted a February 2006 report of an attending nurse.

[5] The Office stated: "You have established that your employing agency acted unreasonably in the administration of a personnel matter regarding debt collection."

[6] The envelope containing the request was postmarked April 12, 2006. In connection with his request, appellant submitted a February 28, 2006 report of Dr. Jean-Pierre.

LEGAL PRECEDENT -- ISSUE 1

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[7] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[8]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[9] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[10]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[11] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[12]

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that, although he established a compensable employment factor, he did not

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[7] 5 U.S.C. §§ 8101-8193.

[8] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[9] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[10] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[11] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[12] *Id.*

submit sufficient medical evidence to show that he sustained an emotional condition due to that employment factor. The Board will initially review whether appellant's claimed incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment erred when it attempted to garnish his wages to collect a debt, the Board finds that this allegation relates 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.[13] Although the handling of debt collection is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.[14] 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.[15]

The Office properly determined that appellant established an employment factor due to the employing establishment's refusal to comply with judicial decisions which dictated that the employing establishment could not collect a $727.73 debt from appellant's wages. The record contains judicial documents in which Judge Houston, the Chief Administrative Law Judge for the employing establishment, determined that the employing establishment could not collect the debt from appellant. The employing establishment committed an error in an administrative function when it attempted to collect the debt despite the existence of a judicial determination prohibiting such collection.[16]

Appellant has also alleged that the employing establishment's attempts to garnish his wages were instituted to retaliate for his filing of grievances and constituted a form of harassment by his supervisors. He claimed that management called him a liar, told him to stop complaining and wrongly indicated that he was not able to work without supervision. 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.[17] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[18]

[13] *See generally 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).

[14] *Id.*

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

[16] Appellant also generally alleged that management misinformed him about his rights and falsified documents which were submitted in connection with his claims and grievances regarding the collection of the debt. However, appellant did not submit evidence showing that management misinformed him about his rights and falsified documents or establish that it otherwise committed error or abuse with respect to any other aspect of the debt collection matter.

[17] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

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

Appellant has not submitted sufficient evidence to establish that he was harassed by his supervisors with respect to the debt collection matter.[19] Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[20] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination in connection with the debt collection matter.

Appellant has only established a compensable factor of employment with respect to the administrative error made by the employing establishment when it attempted to garnish his wages to collect a debt despite the existence of a contrary judicial determination. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[21]

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained an emotional condition due to the accepted employment factor.

Appellant submitted a November 9, 2005 report in which Dr. Jean-Pierre, an attending Board-certified psychiatrist, indicated that he was under "extreme stress and duress" at work and recommended that he take a month's leave of absence to recuperate. However, Dr. Jean-Pierre provided no description of the source for the noted "extreme stress and duress." He gave no indication that appellant's emotional condition or disability was related to the accepted employment factor, *i.e.*, management's attempt to collect the debt from his wages.

Appellant also submitted several reports of Dr. Jean-Pierre dated between early 2004 and mid 2005, but these reports related to a period prior to the time of the emotional condition alleged in the present case.[22] Appellant submitted October 2003 reports of Dr. Shelton, an attending Board-certified family practitioner and a November 2003 report of Dr. Rao, an attending Board-certified psychiatrist, but these reports would not be irrelevant for the same reason.[23]

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[19] *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).

[20] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[21] *Id.* at 1168.

[22] Some of these reports referred to appellant's fear of working with a particular employee and his claim that management assigned him certain tasks as punishment, but he has not alleged in the present case that he sustained an emotional condition due to such stressors.

[23] Appellant also submitted a February 2006 report of an attending nurse. However, a nurse is not a "physician" within the definitions under the Act and thus cannot render a medical opinion on the causal relationship between a given medical condition and implicated employment factors. *See Bertha L. Arnold*, 38 ECAB 282, 285 (1986); 5 U.S.C. § 8101(2).

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision. The Office's regulations have expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing." The Office has provided that such review of the written record is also subject to the same requirement that the request be made within 30 days of the Office's final decision.[24]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[25] The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.[26]

ANALYSIS -- ISSUE 2

Appellant's April 12, 2006 request for a review of the written record was made more than 30 days after the date of issuance of the Office's prior decision dated March 7, 2006 and, thus, appellant was not entitled to a review of the written record as a matter of right. Hence, the Office was correct in stating in its May 10, 2006 decision that appellant was not entitled to a review of the written record as a matter of right because his request for a review of the written record was not made within 30 days of the Office's decision.

While the Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right, the Office, in its May 10, 2006 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request for a review of the written record on the basis that appellant's emotional condition claim could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[27] The evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion.

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[24] 20 C.F.R. § 10.616(a); *see Michael J. Welsh*, 40 ECAB 994, 996 (1989).

[25] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[26] *See Welsh, supra* note 24 at 996-97.

[27] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

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. The Board further finds that the Office properly denied appellant's request for a review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 10 and March 7, 2006 decisions are affirmed.

Issued: November 30, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board