United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 07-960**
	)	**Issued: August 1, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Hubbard, OH, Employer	)	

Appearances:
Alan J. Shapiro, 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 February 26, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 20, 2006 and January 30, 2007 merit decisions denying his emotional condition claim. 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 met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 17, 2005 appellant, then a 52-year-old mail carrier, filed an occupational disease claim alleging that he sustained major depression, generalized anxiety disorder and somatoform disorder in the performance of duty. He asserted that he sustained "stress caused by my supervisor and substitute worker on about August 15, 2005 and September 9, 2005." Appellant stopped work on July 23, 2005 and did not return. He submitted several medical

reports, dated beginning in September 2005, produced by Dr. Joseph D. Perry, an attending clinical psychologist, and Dr. Rodney Altman, an attending osteopath.

In a November 30, 2005 letter, Martin F. Kuboff, the postmaster for the employing establishment, stated that appellant advised him in August 2005 that he did not have any medical problems but that he wished to resign from the employing establishment to pursue other work opportunities. In a November 30, 2005 letter, Van F. Esenwein, a supervisor provided a similar account of appellant's actions around this time period.

In a December 12, 2005 letter, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

In undated statements received by the Office in January 2006, appellant alleged that Mr. Kuboff committed discrimination and that he provided a female coworker, Paula Wozniak, with a regular substitute carrier, but did not provide him with the same support.[1] He asserted that Mr. Kuboff violated the union contract by not providing him with a regular substitute carrier so that he could take regular days off, plan vacations and schedule doctors' appointments as well as avoid working more than 2080 hours per year. Appellant claimed that Mr. Kuboff violated the union contract by not ensuring that he took his 30-minute lunch break each day and asserted that nobody ever directly told him that not eating was unhealthy and unsafe. He claimed that Mr. Kuboff disclosed appellant's private medical information with everyone at the workplace and told them he was a "nut." Appellant asserted that Mr. Kuboff harassed him by repeatedly telling him to be "careful." He also submitted the first page of a letter of mutual understanding regarding article 30.2.G.7 of the National Agreement between the union and management.

In a March 24, 2005 statement, Mr. Kuboff indicated that Ms. Wozniak served as appellant's substitute carrier in accordance with the strictures of the union contract. He indicated that since he became postmaster appellant had never been denied any form of leave and that he worked substantially fewer than 2080 hours per year. Mr. Kuboff asserted that appellant tended to take 15-minute smoking breaks away from his work area twice per day and claimed that he never recorded these time periods as part of his lunch break even though such time away from his work area would be considered part of his lunch break. He asserted that he never discussed appellant's private medical situation on the work floor and indicated that he treated him with dignity and respect at all times.

In a decision dated April 20, 2006, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors.

At a November 21, 2006 hearing before an Office hearing representative, appellant provided additional details regarding his claimed employment factors. He denied Mr. Kuboff's assertion that he often took 15-minute smoking breaks at work. Appellant submitted a November 19, 2004 memorandum in which an employing establishment official indicated that there were no provisions that permitted employees to "waive" their right to a lunch break and that all employees were entitled to at least a 30-minute lunch break for each continuous 6-hour period of work. He also submitted additional medical reports of Dr. Perry and Dr. Altman.

[1] He indicated that Ms. Wozniak would only substitute for him if he was in "desperate need."

In a decision dated and finalized January 30, 2007, the Office hearing representative affirmed the Office's April 20, 2006 decision.

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 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.[2] 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.[3]

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.[4] 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.[5]

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.[6] 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.[7]

The Board has found that administrative or personnel matters generally are unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of

[2] 5 U.S.C. §§ 8101-8193.

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

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

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

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

[7] *Id.*

the Act.[8] Although the handling of leave requests, the provision of work support, the assignment of work duties and other administrative actions are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[9] 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.[10]

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from an employee's performance of his regular duties, these could constitute employment factors.[11] 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.[12]

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated April 20, 2006 and January 30, 2007, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant asserted that Mr. Kuboff violated the union contract by not providing him with a regular substitute carrier so that he could take regular days off, plan vacations, schedule doctors' appointments and avoid working more than 2080 hours per year. He claimed that Mr. Kuboff also violated the union contract by not ensuring that he took his 30-minute lunch break each day and asserted that Mr. Kuboff shared his private medical information with everyone at the workplace.

Regarding appellant's allegations that the employing establishment failed to give proper work support, wrongly denied leave, improperly assigned work duties and engaged in prohibited sharing of private information, the Board finds that these allegations relate to administrative matters. However, he did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters.[13] Appellant submitted the

[8] *See 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).

[9] *Id.*

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

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

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

[13] *See supra* notes 9 and 10 and accompanying text.

first page of a letter of mutual understanding regarding article 30.2.G.7 of the union contract and a November 19, 2004 memorandum in which an employing establishment official indicated that there were no provisions that permitted employees to "waive" their right to a 30-minute lunch break for each continuous 6-hour period of work. However, these documents of general application do not provide any indication that the employing establishment committed wrongdoing in the manner claimed by appellant and he did not submit any particularized evidence, such as the favorable findings of a grievance, to support his claim.

In addition, Mr. Kuboff indicated that Ms. Wozniak properly served as appellant's substitute carrier, that he never denied appellant any form of leave and that he never discussed his private medical situation on the work floor. He noted that appellant tended to take 15-minute smoking breaks and was not required to record these time periods as part of his lunch break, but there is no indication that this practice violated appellant's rights under the union contract. For these reasons, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that Mr. Kuboff committed discrimination in that he provided Ms. Wozniak with a regular substitute carrier, but did not provide him with the same support. He claimed that Mr. Kuboff harassed him by telling coworkers that he was a "nut" and by repeatedly telling him to be "careful." The establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by Mr. Kuboff.[14] Appellant alleged that Mr. Kuboff made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[15] With respect to his claim that Mr. Kuboff discriminated against him in favor of Ms. Wozniak, appellant did not submit evidence, such as the favorable findings of a grievance, to support his claim.[16] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

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.[17]

[14] *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).

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

[16] As previously noted, Mr. Kuboff indicated that Ms. Wozniak properly served as a substitute carrier for appellant.

[17] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

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 Office of Workers' Compensation Programs' January 30, 2007 and April 20, 2006 decisions are affirmed.

Issued: August 1, 2007
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