

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

R.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Alliance, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1147
Issued: September 10, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 22, 2007 appellant, through counsel, filed a timely appeal from merit decisions dated August 15, 2006 and March 1, 2007 of the Office of Workers' Compensation Programs, finding that he did not sustain an emotional condition while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition while in the performance of duty.

FACTUAL HISTORY

On March 8, 2006 appellant, then a 36-year-old letter carrier, filed an occupational disease claim. On October 14, 2005 he first became aware of his severe depression, stress and anxiety and realized that these conditions were caused by factors of his federal employment. Appellant stated that on October 14, 2005 he was issued a suspension for failing to be in regular attendance at work due to his plantar fasciitis condition. On December 5, 2005 his attending

physician advised him to take time off from work due to his severe depression. Appellant stated that he stopped work on March 1, 2006. His claim was accompanied by an employment record regarding his salary and leave.

Postmaster Burris controverted appellant's claim on the grounds that fact of injury had not been established. In a letter dated March 11, 2006, Janet Yarosik, a case manager, controverted appellant's claim. She contended that management had neither erred nor acted inappropriately in the administration of personnel matters.

By letter dated March 22, 2006, the Office requested that the employing establishment provide comments regarding appellant's allegation and copies of documents related to the October 14, 2005 suspension. On March 22, 2006 the Office also advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit.

The employing establishment submitted a fraud and abuse referral checklist signed by Postmaster Burris on March 14, 2006. In a March 13, 2006 statement, Postmaster Burris related that appellant had worked for him for almost three years and that he was unaware of any work-related stress. He stated that appellant filed a grievance upon receiving a three-day suspension on November 14, 2005. Postmaster Burris indicated that appellant generally worked eight hours per day, five days per week. He worked overtime on his route which he claimed was due to his medication.

Medical treatment notes covering intermittent dates from January 22, 2004 to November 7, 2005 addressed appellant's plantar fasciitis condition.

In a March 6, 2006 memorandum, Ms. Yarosik noted that the Office had denied appellant's claim for a foot condition on February 24, 2006. She advised that he could seek a light-duty work assignment for a nonjob-related injury if he was previously performing limited-duty work.

In a statement dated December 8, 2005, appellant related that he was off work until December 19, 2005 due to stress. He noted a preexisting bipolar disorder condition. Appellant stated that he never showed signs of depression at work, but it was a different story on his route and at home. At work, he lost chunks of time and at home he would stare into space and forget what he was doing. Appellant discussed his medical treatment. His physician wanted to place him on a suicide watch but he was able to talk him out of it and returned home. Appellant stated that he was heavily medicated and fought the urge to hurt himself.

Appellant indicated that, at the end of 2003, he experienced severe foot pain that was reduced by over-the-counter pain medication. Once this medication stopped working, he sought medical treatment from his family physician in January 2004. On January 22, 2004 appellant was referred to Dr. Charles Yarnevich, a podiatrist. He considered his work a major factor for his condition because he was required to walk long distances while carrying up to 30 pounds. Appellant also alleged stress 8 to 10 hours per day at work. He noted that he had previously experienced foot pain while in the Army but that his current pain was more severe and involved the plantar fascia.

Appellant submitted the employing establishment's November 9, 2005 letter, notifying him that he was suspended for seven days for failure to maintain a regular work schedule. It noted that he was previously issued a letter of warning on October 13, 2005 for failure to be in regular attendance. On March 17, 2005 the employing establishment issued a letter of warning to appellant regarding his failure to maintain a regular work schedule.

A January 9, 2006 medical report from Dr. Rajnikant Kothari, an attending Board-certified psychiatrist, noted that appellant's symptoms included extreme anxiety, crying, shaking, sleeplessness, loss of appetite and weight, inability to concentrate, wringing of the hands and pacing. Dr. Kothari stated that his foot condition developed on October 15, 2005. Appellant missed work from November 5 to 12, 2005 and was disciplined due to this condition. Dr. Kothari opined that severe stress, anxiety and depression followed and led to appellant's incapacitation on December 5, 2005. He diagnosed bipolar disorder and found that appellant was currently incapacitated for an unknown period. In a January 23, 2006 report, Dr. Kothari found that appellant was totally disabled for work from December 5, 2005 to January 28, 2006. He opined that appellant could return to work on January 28, 2006 with restriction.

Treatment notes dated February 28 to December 19, 2002 found that appellant suffered from an emotional condition. An April 20, 2002 treatment note stated that appellant experienced work-related stress. His boss bent the rules by allowing his coworkers to work extra hours which resulted in fewer work hours for him. Appellant confronted his boss about this situation on several occasions and he was told that no changes would be made and threatened with loss of his job. His boss called him a troublemaker and was in his face a lot about this. Appellant spoke to someone in upper management and since then his boss had been constantly over his shoulder and reduced his work hours. Appellant filed a grievance for discrimination with the Equal Employment Opportunity (EEO) Commission against the employing establishment. He attempted to transfer to a different office but believed that it was being held up by his boss. Appellant was only working 24 hours per week and sometimes worked in a different office. He complained of problems sleeping, anxiety and mood swings which caused him to snap at his wife and concerns about impregnating his wife. Appellant was diagnosed with depression. A May 4, 2002 treatment note stated that appellant experienced anxiety about returning to work because the union was involved in his situation and he was still waiting for a transfer to a different office. A November 26, 2002 treatment note stated that appellant's supervisor requested that he provide proof of his physical and mental disability. Appellant alleged that on November 26, 2002 his supervisor was in his face again. He picked at small things that other people also did in the office and appellant could not understand why his supervisor was bothering him. For the rest of the day, appellant felt rage and he had poor concentration which almost caused him to get hit by a car while delivering mail on his route. He returned to the office and submitted a leave slip to go home. Appellant indicated that he had filed a workers' compensation claim for this incident.

Appellant related that he had been evaluated for stress, anxiety, depression and a bipolar disorder since February 2002. He missed work from February to March 2005. Appellant contended that the employing establishment's March 17, 2005 letter of warning and November 9, 2005 suspension caused his emotional condition. He stated that, from 2002 to 2004, he only experienced minor everyday stress and that his emotional condition worsened due to working at the employing establishment.

In a January 12, 2006 disability certificate, Dr. Kothari found that appellant was unable to work until further notice. On January 23, 2006 he released appellant to return to work on January 28, 2006, indicating that he could work five days per week and overtime on his route only.

By letter dated July 2, 2002, Nancy J. O'Hara, a registered nurse and licensed counselor, stated that appellant had been her client since April 24, 2002. According to appellant, he sought counseling for work-related stress and presented with symptoms of clinical anxiety and depression.

A January 31, 2006 report Dr. Lawrence M. Cohen, a podiatrist, stated that appellant was initially treated on January 19, 2006 for plantar fasciitis of the right arch. He limited extended walking which could aggravate the condition. A November 10, 2005 report indicated that appellant had sore feet and bumps on the bottom of his arches. His condition began in July 2005 and continued. Appellant was totally disabled for work from November 5 to 13, 2005.

By decision dated August 15, 2006, the Office found that appellant did not sustain an emotional condition while in the performance of duty. It found that the issuance of the March 17, 2005 letter of warning and November 9, 2005 suspension by the employing establishment and appellant's filing of an occupational disease claim for his foot condition did not constitute compensable factors of his employment.

In a letter dated August 24, 2006, appellant, through counsel, requested an oral hearing before an Office hearing representative.

In a decision dated March 1, 2007, a hearing representative affirmed the August 15, 2006 decision. He found that appellant's allegation that the March 17, 2005 letter of warning and November 9, 2005 suspension caused his emotional condition involved administrative matters and that appellant failed to establish that the employing establishment committed error or abuse in these matters. The hearing representative also found that he failed to establish that he was harassed at the employing establishment.

LEGAL PRECEDENT

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

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Act.⁴ 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 under the Act.⁵ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁶ 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 under the Act.

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.⁷ 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.⁸

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.⁹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.¹⁰

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3.

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ *Lillian Cutler*, *supra* note 3.

¹⁰ *Michael L. Malone*, 46 ECAB 957 (1995).

However, 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.¹¹

ANALYSIS

Appellant attributed his emotional condition to unwarranted disciplinary action and harassment by management. The employing establishment issued suspension letters on October 14 and November 9, 2005 and a warning letter on March 17, 2005 to appellant for failure to maintain a regular work schedule. Appellant alleged that his coworkers were allowed to work extra hours which resulted in fewer hours for him. When he spoke to his supervisor about the reduction of his work hours, his supervisor called him a troublemaker. After discussing this matter with upper management, appellant alleged that his supervisor constantly watched him and reduced his hours. Appellant filed an EEO grievance against the employing establishment for discrimination and the reduction of his work hours. His request for a transfer to a different office was denied by the employing establishment and he believed it was held up by his supervisor. Appellant was asked to provide documentation in support of his physical and mental disability by the employing establishment.

The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that the harassment or discrimination did in fact occur.¹² Mere perceptions and feelings of harassment or discrimination will not support an award of compensation.¹³ Ms. Yarosik denied that the employing establishment erred or acted inappropriately in the handling of personnel matters related to appellant. Postmaster Burris stated that appellant worked for him for almost three years and he was unaware of his work-related stress. Appellant has not submitted evidence sufficient to establish that the disciplinary actions taken by his supervisors constituted harassment or discrimination.

Regarding appellant's allegations that the disciplinary actions taken by the employing establishment were unwarranted, the Board has held that disciplinary actions including oral reprimands, discussions or letters of warning¹⁴ and notices of suspension¹⁵ for conduct pertain to noncompensable administrative or personnel actions unless the employee shows that the employing establishment erred or acted unreasonably. Similarly, the reduction of work hours,¹⁶

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹² *James E. Norris*, 52 ECAB 93 (2000).

¹³ *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

¹⁴ *Charles D. Edwards*, *supra* note 11.

¹⁵ *James H. Botts*, 50 ECAB 265 (1999).

¹⁶ *Janice I. Moore*, 53 ECAB 777 (2002).

monitoring of work,¹⁷ denial of requests for transfer¹⁸ and request for medical documentation¹⁹ by the employing establishment and the filing of complaints and grievances by appellant²⁰ relate to noncompensable administrative and personnel actions. Ms. Yarosik denied that the employing establishment erred or acted inappropriately in handling appellant's personnel matters. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.²¹ In this case, the record does not contain a final decision regarding a grievance or any other EEO claim. Appellant has not substantiated that the employing establishment erred or acted abusively with regard to the issuance of the letters of suspension and warning, the reduction of his work hours, monitoring his work, denying his request for a transfer or by requesting medical documentation. Accordingly, he has not established a compensable factor of employment.

Regarding appellant's emotional reaction to the denial of an occupational disease claim for his plantar fasciitis foot condition, the Board notes that the development of any emotional condition related to such matters does not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially-assigned duties.²² Therefore, this is not a compensable factor of employment.

CONCLUSION

As appellant has not identified any compensable factors of his employment, the Board finds that he has failed to establish that he sustained an emotional condition while in the performance of duty.²³

¹⁷ *Lori A. Facey*, 55 ECAB 217, 224 (2004).

¹⁸ *Ernest J. Malagrida*, 51 ECAB 287 (2000).

¹⁹ *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

²⁰ *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

²¹ *Michael L. Deas*, 53 ECAB 208 (2001).

²² *George A. Ross*, 43 ECAB 346 (1991).

²³ As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment as the cause of his emotional condition, the medical evidence regarding appellant's emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2007 and August 15, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 10, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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