United States Department of Labor
Employees' Compensation Appeals Board

A.K., Appellant	)	
and	)	**Docket No. 07-2270**
	)	**Issued: April 16, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Upland, CA, Employer	)	

Appearances:
Appellant, pro se
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 September 5, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 6, 2007, which denied modification of a January 5, 2007 decision denying his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On January 3, 2006 appellant, then a 50-year-old letter carrier, filed an occupational disease claim, Form CA-2, alleging that he developed depression and anxiety due to increased stress at work. He became aware of his condition on December 6, 2005. Appellant stopped work on December 5, 2005.

In a December 30, 2005 statement, appellant indicated that in October 2005, approximately 80 personal vehicles, including his own, were accidentally damaged by paint overspray applied by a contractor for the employing establishment. He stated that on November 19, 2005 his office had a "stand up" meeting to address the issue of the damaged vehicles. During the meeting, appellant asked Michael S. Reading, the postmaster, about options for recourse for those employees who chose not to use the car detailers provided by the employing establishment. He alleged that Mr. Reading refused to answer his question and instructed appellant to come to his office after the meeting to discuss the matter further. Appellant requested that Mr. Reading answer the question during the meeting so that the other employees could share the information. He alleged that Mr. Reading became loud and was visibly agitated with intimidating body language and said "go to my office, I will talk to you after the stand-up!" Appellant felt humiliated in front of his coworkers. After the meeting, he met with Mr. Reading at his office and his demeanor was threatening. When appellant requested that his wife accompany him, Mr. Reading yelled at her: "You're not coming! He is going alone!" Appellant was subsequently accompanied by a union representative at the meeting and alleged that Mr. Reading was visibly upset, exhibited threatening mannerisms, bullied and abused him. He alleged that on December 5, 2005, Mr. Reading improperly issued him a 14-day suspension.

Appellant submitted several statements from coworkers who were present at the stand-up meeting on November 19, 2005. They confirmed that he made an inquiry at the meeting regarding the repair of the damaged vehicles and Mr. Reading instructed appellant to meet in his office after the meeting to discuss the matter. He submitted a notice of 14-day suspension dated December 5, 2005 for failure to follow instructions on November 19, 2005. The suspension noted that appellant repeatedly interrupted the postmaster during the stand-up meeting and refused the instruction of the postmaster to meet him in his office after the meeting. In a December 19, 2005 note, Dr. Yin Hsiung Lai, a Board-certified family practitioner, stated that after a job-related injury appellant was unable to work for 30 days.

The employing establishment submitted a January 6, 2006 statement from Mr. Reading who noted that, on December 5, 2005, appellant received an administrative action based on his failure to follow instructions on November 19, 2005. Mr. Reading noted that appellant attributed his stress, depression and anxiety dated to November 19, 2005; however, appellant worked from November 19 to December 5, 2005 without any mention of stress, anxiety or mental depression. He stated that appellant stopped working after he received the administrative action. Mr. Reading advised that appellant made a statement to Margo Vasquez, appellant's supervisor, on December 5, 2005, after he was issued the disciplinary action and jokingly requested a "time off suspension." He indicated that appellant was not concerned or stressed when he received the administrative action from his supervisor. The employing establishment controverted the claim, asserting that the disciplinary action was an administrative matter.

A November 22, 2005 investigative memorandum prepared by Ms. Vasquez noted that, during an investigative interview, appellant asserted that on November 19, 2005 he followed Mr. Reading's instructions and reported to his office after the stand-up meeting. Appellant indicated that he was aware that he was required to follow the instructions of his manager and contended that he had followed instructions. He stated that he felt threatened by Mr. Reading when he was instructed to go to his office after the meeting. Appellant stated that he was not

confrontational when he questioned Mr. Reading at the meeting; rather, he sought to obtain complete information. Ms. Vasquez noted that during the interview, Mr. Reading stated that appellant interrupted the stand-up meeting so frequently that it was necessary to ask him to report to his office after the meeting.

In a March 16, 2006 decision, the Office denied appellant's claim, finding that his emotional condition did not arise in the performance of duty.

Appellant requested an oral hearing that was held on October 24, 2006. He submitted a section of a union manual on discipline procedures. In an April 3, 2006 grievance resolution, management agreed to rescind the December 5, 2005 14-day no time off suspension. The grievance document did not make any findings with regard to whether management acted in error. Appellant submitted a report from Dr. Donald B. Horowitz, a Board-certified psychiatrist and neurologist, dated April 17, 2006. He was treated for depression and irritability which occurred after he was issued a 14-day suspension on December 5, 2005. Dr. Horowitz diagnosed major depression, single episode and post-traumatic stress reaction. In a statement dated November 10, 2006, a union steward asserted that the 14-day suspension was abusive and was ultimately rescinded.

By decision dated January 5, 2007, the hearing representative affirmed the March 16, 2006 decision of the Office, finding that appellant had not established any compensable employment factors.

In a letter dated May 27, 2007, appellant requested reconsideration. He submitted a duplicate copy of the December 5, 2005 notice of suspension.

In a June 6, 2007 decision, the Office denied modification of the January 5, 2007 decision.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant 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.[1]

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*,[2] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[3]

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

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.[4] 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.[5] 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. 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 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.[6]

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]

ANALYSIS -- ISSUE 1

Appellant alleged that he was harassed and humiliated by Mr. Reading, the postmaster, on November 19, 2005, during a stand-up meeting which was held to address the recourse for those employees whose automobiles had been damaged. During the meeting, Mr. Reading became visibly agitated after appellant asked a question, refused to answer the question and instructed appellant in a loud manner to "go to my office, I will talk to you after the stand-up!" Appellant indicated that he felt humiliated in front of his coworkers. He also alleged that when he presented to Mr. Reading's office, the postmaster's demeanor was threatening, he was visibly upset and exhibited threatening mannerisms. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance

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

[5] *Lillian Cutler, supra* note 2.

[6] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler, supra* note 2.

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

[8] *Id.*

of his regular duties, these could constitute employment factors.[9] 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 are not compensable under the Act.[10]

The factual evidence fails to support appellant's allegation of harassment. An investigative memorandum dated November 22, 2005, prepared by Ms. Vasquez, noted that appellant interrupted the stand-up meeting and Mr. Reading found that it was necessary to ask him to report to his office after the meeting to discuss the matter. Appellant acknowledged that he interrupted the meeting with questions and when Mr. Reading indicated that he would address his concerns in his office after the meeting, appellant persisted in further questioning the postmaster.

General allegations of harassment are not sufficient.[11] Appellant has not submitted sufficient evidence to establish error or abuse by his supervisor.[12] Although he alleged that his supervisor harassed and humiliated him and engaged in actions which he believed constituted harassment, he provided insufficient corroborating evidence or witness statements to establish his allegations.[13] Appellant submitted several witness statements from coworkers who were present at the stand-up meeting. They generally confirmed that appellant questioned Mr. Reading during the meeting and Mr. Reading instructed him to report to his office. These statements, however, do no support that he was harassed by the postmaster. Rather, they confirm that appellant repeatedly interrupted the meeting. As noted the investigative memorandum also supports that appellant interrupted the stand-up meeting while Mr. Reading attempted to finish his presentation. There is insufficient evidence to establish that Mr. Reading acted improperly in light of appellant's behavior. The Board notes that there is no evidence substantiating appellant's charges. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

To the extent that appellant alleged verbal abuse and threats by Mr. Reading, the Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[14] The Board finds that the facts of the case do not establish that appellant's superior threatened him or acted unreasonably. Appellant provided insufficient evidence to establish his allegations.[15] Mr. Reading denied that he threatened appellant in a hostile manner. There is no

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

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

[11] S*ee Paul Trotman-Hall,* 45 ECAB 229 (1993).

[12] *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).

[13] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[14] *Charles D. Edwards*, 55 ECAB 258 (2004).

[15] *See William P. George*, *supra* note 13.

corroborating evidence to support that Mr. Reading acted abusively. Appellant has not otherwise shown how supervisory comments or actions rose to the level of verbal abuse or otherwise fell within coverage of the Act.[16]

Other allegations by appellant relate to administrative or personnel actions. In *Thomas D. McEuen*,[17] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[18]

Appellant's allegation that he was improperly disciplined relates to an administrative or personnel matter unrelated to the his regular or specially assigned duties and does not fall within the coverage of the Act.[19] Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[20] The record, as noted reveals that on November 19, 2005 appellant interrupted Mr. Reading during the stand-up meeting. After Mr. Reading instructed appellant to meet him in his office to further discuss the matter, appellant ignored the instruction and persisted in questioning Mr. Reading.[21] As a result, the postmaster disciplined appellant. The record reflects that the 14-day suspension was rescinded on April 3, 2006 as part of the grievance resolution process without any finding of blame or fault by either party. The fact that the matter was rescinded does not establish that the postmaster's action was erroneous.[22] The grievance resolution does not contain any finding that the disciplinary letter was issued in error. Appellant has not established administrative error or abuse in the disciplinary action and it is not a compensable factor.

[16] *See Judy L. Kahn*, 53 ECAB 321 (2002) (the fact that a supervisor was angry and raised her voice does not, by itself, support a finding of verbal abuse).

[17] *See Thomas D. McEuen*, *supra* note 6.

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

[19] *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).

[20] *Id.*

[21] The supervisor's instruction that appellant report to his office after the stand-up meeting would be considered an administrative matter. *See Kim Nguyen*, 53 ECAB 127, 129 (2001).

[22] *See Linda K. Mitchell*, 54 ECAB 748 (2003) (the mere fact that the employing establishment lessened a disciplinary action did not establish that the employing establishment erred or acted in an abusive manner).

Consequently, appellant has not established his claim for an emotional condition.[23]

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 6 and January 5, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 16, 2008
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

[23] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).