United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 07-1792**
	)	**Issued: January 17, 2008**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Lawton, OK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 25, 2007 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated August 3, 2006 and March 28, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

This issue is whether appellant met his burden of proof to establish that he sustained an emotional condition or hives in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On June 22, 2006 appellant, then a 52-year-old letter carrier, filed a claim alleging that confrontations with his supervisor from May 13 to 25, 2006 caused anxiety attacks. He stopped

work on June 12, 2006.[1] By letters dated June 28, 2006, the Office informed appellant of the evidence needed to support his claim and asked that the employing establishment respond to his allegations.

In undated statements, appellant noted that in 1994 or 1995 he had rotator cuff surgery on both shoulders and returned to work in May 1995. He was restricted to working eight hours a day, five days a week, with no overtime. In 1996, appellant developed hives and his physician again recommended a consistent workweek. On Tuesday, May 23, 2006 he brought the proposed schedule, which showed that he was to work Saturday, May 27, 2006 to the attention of Mark Foley, customer service supervisor, protesting that he was scheduled to work that day. On Wednesday, May 24, 2006 and Thursday, May 25, 2006 appellant had discussions with Mr. Foley and his union representative, but that the schedule was not changed. He noted that Mr. Foley suggested a change to a five-day workweek with Thursday off, but appellant requested Monday off. Appellant was told by Mr. Foley that he did not have the seniority for Monday off and alleged that Mr. Foley exhibited a bad attitude. He related that he had an anxiety attack while on his route on May 25, 2006 and went to his family physician, Dr. Brian Birdwell, a Board-certified internist. Appellant went on leave and only had attacks when he talked about work, had to meet with his supervisor, or when he was dealing with filing his claim. He stated that Mr. Foley was rude to his wife when she dropped off his disability slip from his physician. Dr. Birdwell advised that he not return to work and that he could not drive due to medication. On June 15, 2006 he took letters from Dr. Birdwell and Dr. James Toy, a chiropractor, to Mr. Foley who read these aloud on the workroom floor. Appellant noted that he was still having anxiety attacks and hives, was on medication and seeing a psychiatrist and was angry that his life had been turned upside down.

Appellant submitted medical evidence including reports dated April 1, 1997 and July 7, 1998 in which Dr. Joe M. Roundtree, a Board-certified dermatologist, noted that appellant had hives which were chronic and aggravated by stress. Dr. Roundtree advised that appellant should only work 40 hours a week until the condition was under control. In a report dated February 24, 1998, Dr. Robert M. Simpson, a Board-certified orthopedic surgeon, advised that appellant should not work over eight hours a day with no overtime. On March 13, 2001 he performed bilateral shoulder decompressive surgeries. When appellant was last seen on February 24, 1998, he was released for eight hours per day of work, five days a week, without restriction. Dr. Birdwell submitted reports dating from January 23 to June 14, 2006, in which he noted that appellant had a long history of urticaria/hives and also had anger control issues and an anxiety disorder. He described appellant's treatment regimen and advised that when appellant limited his workweek, the conditions were under control.

The employing establishment controverted the claim. In a July 18, 2006 statement, Mr. Foley stated that on May 22, 2006 he posted the following week's Memorial Day holiday schedule and appellant was on the list to work for Saturday May 27, 2006, on what was his regular workday. Mr. Foley stated that appellant approached him and told him he would not be working that day and to take his name off the list. He told appellant that he was scheduled to

[1] Appellant filed a Form CA-1, traumatic injury claim. The Office, however, properly adjudicated that claim as an occupational disease as the claimed factors occurred over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

work and if he failed to do so he would be absent without leave. Mr. Foley stated that, even though he had worked at the employing establishment for three years, he learned for the first time that appellant had a profile limiting him to not working over eight hours a day, five days a week. However, since 1998 appellant had worked six days a week every sixth week. He noted that carriers took turns working a holiday but that appellant had never worked a holiday schedule and was scheduled to begin annual leave on Tuesday May 30, 2006. Mr. Foley stated that he had several discussions with appellant and his union representative concerning proposed schedules but that appellant did not agree with any of the suggestions. Appellant turned in a sick slip and did not work on Saturday, May 27, 2006. Mr. Foley stated that he was never rude to appellant or his wife.

By decision dated August 3, 2006, the Office denied the claim on the grounds that appellant had not sustained an injury in the performance of duty.

Appellant requested reconsideration and submitted duplicates of evidence previously of record. On July 28, 2006 Dr. Birdwell advised that the most recent episode occurred at a time "when these work parameters were apparently being ignored" and the ensuing stressful conflict reignited his stress-related diseases. In reports dated July 18 and August 23, 2006, Dr. Sergio H. Castillo, a Board-certified psychiatrist, noted that appellant had been receiving outpatient care since June 22, 2006. He diagnosed generalized anxiety disorder and panic disorder without agoraphobia. Dr. Castillo advised that the precipitating factors were feeling bullied at work and, per his report, that less than perfect performance at work was not tolerated and concluded that appellant had responded fairly well to medication and therapy but that he should not drive or operate any motorized vehicle or machinery, that his current level of anxiety would not allow him to perform well if in contact with the public and that day-shift work was recommended because of his "issues with insomnia." Appellant also submitted statements from his wife, Martha J. Rees, his mother-in-law and father-in-law, Nancy and Gilbert D. Hutchinson, and Kathy Graham, a friend, all of whom attested to his character. In an August 19, 2006 statement, Bill Keeran, a coworker, advised that he overheard Mr. Foley saying that he wished appellant would die. It was his opinion that management created a hostile work environment for appellant. In correspondence dated March 27, 2007, Mr. Foley stated that he could not recall saying he wished anyone dead, even in jest.

By decision dated March 28, 2007, the Office denied modification of the August 3, 2006 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 stress-related 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 stress-related condition.[2]

[2] *Leslie C. Moore*, 52 ECAB 132 (2000).

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 as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[4] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[5] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[6] A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.[7]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[8] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[9]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred. Where 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 Equal Employment Opportunity Commission standards. Rather, the issue is whether the

[3] 28 ECAB 125 (1976).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Robert W. Johns*, 51 ECAB 137 (1999).

[6] *Lillian Cutler, supra* note 3.

[7] *Roger Williams*, 52 ECAB 468 (2001).

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

[9] *Kim Nguyen*, 53 ECAB 127 (2001).

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.[10]

ANALYSIS

The Board finds that appellant did not establish that he sustained stress-related condition caused by employment factors. Appellant asserted that the employing establishment improperly required that he work on May 26, 2006. The Board initially notes that there is no evidence of record to indicate that appellant has other accepted conditions in previous claims. Therefore, any accommodations made to appellant's work schedule or his employment duties by the employing establishment would be immaterial under the auspices of the Act. Furthermore, although the assignment of work duties is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. 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] Mr. Foley advised that May 27, 2006 was appellant's scheduled day and that it was policy that the carriers take turns working a holiday day off. He further noted that appellant had not worked a holiday schedule in nearly three years and did not have seniority to take the holiday off. The record therefore does not establish error or abuse on the part of the employing establishment in scheduling appellant to work on Saturday, May 27, 2006 and any reaction to this would be considered self-generated.[12]

Appellant also generally contended that Mr. Foley exhibited a bad attitude in discussions with appellant and was rude to his wife. A claimant must establish a factual basis for his or her allegations of harassment. Mere perceptions of harassment are not compensable.[13] There is no evidence that the meetings held were improper and the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor must be allowed to perform his or her duties and that employees will at times disagree with actions taken. Dislike of an action taken by a supervisor will not be compensable absent a showing of error or abuse.[14] Appellant submitted no corroboration here.

Appellant submitted a statement in which Mr. Keeran advised that he overheard Mr. Foley commenting that he wished appellant would die. The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances; however, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[15] Mr. Foley stated that he did not make the statement. The Board finds that the evidence of record is not sufficient to substantiate verbal abuse of appellant by Mr. Foley, who has not established a compensable factor of employment.

[10] *James E. Norris*, 52 ECAB 93 (2000).

[11] *Charles D. Edwards*, *supra* note 8.

[12] *See generally Phillip L. Barnes*, 55 ECAB 426 (2004).

[13] *Charles D. Edwards*, *supra* note 8.

[14] *See Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

[15] *Id.*

Regarding the additional statements submitted by appellant, the Board finds these too general to establish entitlement as the writers did not witness incidents of harassments.[16] He therefore did not establish that he was harassed by Mr. Foley. As appellant did not submit sufficient probative evidence to establish a compensable factor of employment, he failed to establish that he sustained an emotional condition in the performance of duty.[17]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained either an emotional condition or hives in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 28, 2007 and August 3, 2006 are affirmed.

Issued: January 17, 2008
Washington, DC

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

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

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

[16] *See Cynthia R. Harrill*, 55 ECAB 522 (2004).

[17] Because appellant failed to establish a compensable employment factor, it was not necessary to consider the medical evidence. *Marlon Vera*, 54 ECAB 834 (2003).