United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 07-1926**
	)	**Issued: June 16, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
Office of the 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 July 17, 2007 appellant filed a timely appeal from the June 28, 2007 decision of the Office of Workers' Compensation Programs denying his claim. 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 established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On April 30, 2007 appellant, then a 53-year-old supervisor of distribution operations, filed a Form CA-2, occupational disease claim, alleging that he suffered work-related stress as a result of "unreasonable demands of daily supervisory tasks and administrative workload brought on by an immediate supervisor with no common sense, no people skills, and poor management leadership." He first realized he had the condition and that it was caused or aggravated by his employment on April 12, 2007. Appellant stopped work that day and did not return. In a

separate statement, he alleged that he was overloaded with work daily, listing the following: time and attendance issues; time card management; scheduling and staffing; holiday scheduling; employee attendance issues; employee performance problems; equipment availability problems; productivity problems; machine through-put issues; monitoring employee performance and accountability in four different operational areas; employee training requirements; mandatory powered truck inspections; unreasonable mandatory safety talks; unreasonable unit and individual safety inspections; unreasonable mandatory service talks; mandatory aviation security talks; anonymous mail talks; Hazmat or Hazwoper talks; predisciplinary meetings; grievance activity; discipline writing; completion of 2608s; excessive logging and tracking of paperwork; mechanical problems with machinery; work-hour budget submission; special reports submission; Voice of Employee (VOE) surveys; clock ring error corrections; significant authorization of employee overtime; last minute suspense item demands; extensive monitoring, weighing and placard identification of mail; monitoring and tracking of mail dispatches; and paperwork completion for employees filing traumatic injury and occupational injury claims. Appellant additionally alleged that he was supervised by a manager with poor managerial leadership skills and who was very vindictive and revengeful.

In support of his claim, appellant submitted two April 13, 2007 reports from Dr. Paul P. Schorr, a Board-certified osteopath specializing in family practice, opined that the unreasonable demands of daily supervisory tasks and administrative workload brought on by appellant's immediate supervisor, led to appellant's stress levels and total disability.

In a letter dated April 30, 2007, appellant's supervisor, Faith Ervin-Johnson, Tour III manager of distribution operations, controverted appellant's claim. She indicated that his daily administrative duties were the same as those required of all 37 supervisors and acting supervisors. Ms. Ervin-Johnson disagreed that all of the administrative tasks were performed daily, indicating that appellant's safety manager performed the safety talks; that general grievance activity, grievance activity involving appellant's pay location, and predisciplinary meetings were performed only when they arose; the work-hour budget hours were performed once a week; and the VOE survey was performed on a quarterly basis. She stated that the correction of clock rings occurred because appellant did not mandate that his employees make good clock rings and noted that appellant had completed only one accident package in the past three years. Ms. Ervin-Johnson stated that appellant was paid to do such administrative work and indicated that the bargaining unit work appellant performed was not part of his job duties, but was something he voluntarily did. She further indicated that, upon her recommendation, appellant had received a $1,000.00 award the previous October. Ms. Ervin-Johnson noted that appellant did not monitor his operation, was upset when supervisor overtime was eliminated, and that he wanted to manage himself and not have to answer to anyone. A copy of appellant's job description and e-mails related to his bargaining unit work were attached.

In letters dated May 17, 2007, the Office requested that both appellant and the employing establishment provide additional information regarding the claim. In a response dated May 20, 2007, appellant reiterated his previous allegations and submitted duplicates of evidence previously of record. In an April 22, 2007 report, Dr. Linus J. Miller, an osteopath and general practitioner, advised that he had treated appellant since April 1999 and opined that appellant's hypertension and Type II diabetes mellitus had been made worse by additional demands to his already heavy administrative workload. He advised that appellant was incapacitated.

In a June 18, 2007 statement, Ms. Ervin-Johnson reiterated her disagreement with appellant's assertion that he was required to do an unreasonable amount of supervisory work. She stated that he had more time than other supervisors to do his duties as his unit required very little supervision. Ms. Ervin-Johnson indicated that appellant has always been able to perform his required duties and only complained about his work when he was angry. She noted that he was angry over not having supervisor overtime, and because he was not recognized for job performance, and wanted to work on Equal Employment Opportunity Commission and discipline cases rather than performing his supervisory duties. Ms. Ervin-Johnson also indicated that appellant had an attendance problem and became angry at her when she instructed him to spend his time on the floor monitoring his operation.

By decision dated June 28, 2007, the Office denied appellant's claim on the grounds that he had failed to establish a compensable factor of employment.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the 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 as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[3] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within 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]

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

[1] *Ronald K. Jablanski*, 56 ECAB 616 (2005).

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

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

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

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]

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. Rather, the issue is whether the 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

Appellant alleged that he sustained a stress-related condition as a result of a number of conditions at work. By decision dated June 28, 2007, the Office denied his claim on the grounds that he did not establish a compensable factor of employment. He alleged that being managed by a supervisor with poor managerial skills who was vindictive and revengeful contributed to his condition. An employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which supervisors exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his duties and that employees will at times dislike actions taken.[11] Furthermore, the Board has held that discussions of job performance by an employee's supervisor, and the monitoring and assignment of work are administrative functions that do not fall under the coverage of the Act absent a showing of error or abuse.[12] Appellant's supervisor,

[6] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

[7] *Id.*

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

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

[10] *James E. Norris*, 52 ECAB 93 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

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

[12] *See Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

Ms. Ervin-Johnson, advised that appellant became angry at her when she instructed him to spend his time on the floor monitoring his operation, was angry that supervisory overtime was cut, and did not want to be managed by anyone. Appellant provided no evidence showing that Ms. Ervin-Johnson erred in the exercise of her supervisory duties. He therefore did not establish error or abuse in this administrative matter.[13] Appellant also alleged that Ms. Ervin-Johnson acted in a vindictive and revengeful manner. To the extent that he is alleging harassment or retaliation by his supervisor, for harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.[14] While here appellant made general allegations regarding his supervisor, he submitted nothing to substantiate his claims. As the record lacks probative evidence supporting that he was harassed by employing establishment, the Board finds that appellant has not established a compensable employment factor with respect to the claimed harassment.[15]

The Board has held that an emotional reaction to situations in which an employee is trying to meet his or her position requirements is compensable.[16] In this case, appellant listed numerous factors that he claimed contributed to his stress. In letters dated April 30 and June 18, 2007, Ms. Ervin-Johnson agreed that, several of these factors, such as performance targets, productivity issues, mandatory inspections, Hazmat and Hazwoper talks, grievance activity, pre-disciplinary meetings 2608s, accident packages, authorization of overtime, correction of clock ring errors, work hour budget hours and VOE surveys were regular duties of appellant's position. Given that these duties were part of appellant's job requirements, the Board finds that he has established these as compensable employment factors.

As appellant has established compensable employment factors, the Office must base its decision on an analysis of the medical evidence. The case will therefore be remanded to the Office to analyze and develop to medical evidence.[17] After such further development deemed necessary, the Office shall issue an appropriate decision on the merits of this claim.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

[13] *Kim Nyuyen, supra* note 9.

[14] *James E. Norris, supra* note 10.

[15] *Id.*

[16] *Tina D. Francis*, 56 ECAB 180 (2004).

[17] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: June 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