United States Department of Labor
Employees' Compensation Appeals Board

R.V., Appellant	)	
and	)	**Docket Nos. 07-818, 07-2285**
	)	**Issued: September 25, 2008**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Shreveport, LA, Employer	)	

Appearances:
Deborah Holmes-Valentine, for the appellant
No appearance, for the Director

Oral Argument June 3, 2008

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2007 appellant filed a timely appeal from April 21, 2006 and November 28, 2007 decisions of the Office of Workers' Compensation Programs, 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 claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that his emotional condition was causally related to a compensable employment factor.

FACTUAL HISTORY

On October 2, 2005 and February 18, 2006 appellant, then a 49-year-old mail handler, filed two occupational disease claims for an emotional condition.[1] He alleged that Lord

[1] The OWCP file number for appellant's October 2, 2005 claim is 162102400. The OWCP file number for his February 18, 2006 claim is 162107390.

Hawkins, his supervisor, harassed and discriminated against him. Appellant alleged that he was held to a strict schedule but other employees were allowed to vary the times of their breaks.[2] On February 18, 2006 Mr. Hawkins harassed him regarding his lunch break. On June 17, 2005 and February 18, 2006 appellant did not go to lunch at the time Mr. Hawkins instructed and he received a 14-day suspension for improper conduct and failure to follow instructions. On April 13, 2006 Mr. Hawkins hung up on him when he telephoned to request copies of compensation forms. He criticized appellant's job performance and, on September 15, 2005, stated that he was "going to stick it to" appellant.[3] On February 28, 2006 Mr. Hawkins verbally threatened appellant for not following instructions that appellant denied receiving. Appellant alleged that on October 23, 2003 Martha Reyenga, a supervisor, stated that, if he could not get along with Frank Hernandez, a coworker, he would find himself looking for a job.

The Office requested additional information, including a detailed description of the work situations or incidents that contributed to appellant's emotional condition and a comprehensive medical report explaining how these employment factors caused or aggravated his medical conditions.

Appellant alleged that the employing establishment erred or acted abusively in several administrative or personnel matters. Management denied requests for sick leave and light-duty work. On June 9, 2004 appellant's request for light duty was denied. Ms. Reyenga denied the request because appellant could perform his job with his right hand. Appellant alleged that he was improperly denied sick leave for July 19, 2004. On November 12, 2004 Mr. Hawkins denied his request for leave, stating that he needed documentation of his medical appointment. On January 31, 2006 appellant was denied leave for a medical appointment because he did not provide sufficient documentation. He alleged that on January 30, 2004 he was placed in nonduty status and instructed to submit a light-duty request from his physician before returning to work. Mr. Hawkins explained that he was concerned about the effect of appellant's medications on his job performance and requested a medical note explaining his work restrictions and his need for medications. He alleged that on February 18, 2004 Mr. Hawkins asked him to undergo a medical fitness-for-duty examination. Appellant felt the request was improper because Mr. Hawkins is not a physician. He alleged that management improperly denied his requests for schedule and job changes. Appellant alleged that beginning April 6, 2004 he was denied his bid job. He alleged that in February 2005 he was denied a change in assignment to a higher level job. The employing establishment stated that it properly followed its procedures in making assignments and denied his grievance regarding the matter. Appellant alleged that on March 4, 2005 he was expected to do the work of four people when the employing establishment was shorthanded.

Appellant alleged that management unfairly disciplined him. A December 21, 2001 letter of warning was issued for improper conduct because he reported to work on December 2, 2001

[2] In a November 10, 2006 statement, Richard Friday, the union president, stated that appellant was held to stricter standards at work than other employees such as being held to a strict lunch and break schedule and being required to perform certain tasks other employees were not required to perform.

[3] An employee whose signature is illegible provided a written statement that on September 15, 2005 Mr. Hawkins told appellant that every time he did not perform his job in a satisfactory manner, he would "stick it to" him.

but was not scheduled to work. In an undated statement, an employee whose signature is illegible, stated that, on March 29, 2003, Lonza Bigam, a supervisor, asked Raymond Richardson, who was scheduled to work two hours of overtime on March 30, 2003, if he would like to work eight hours of overtime instead. Appellant was also scheduled to work on March 30, 2003 but he was not offered the opportunity to work the eight hours of overtime. On May 30, 2003 appellant reported to work three hours early. On May 4, 2003 Mr. Bigam issued a seven-day suspension because he failed to follow instructions on March 30, 2003. Appellant stated that he reported early because he heard Mr. Bigam ask another employee to report three hours early and he assumed that he could do the same because he was senior to that employee. He alleged that other employees were not disciplined when they performed unapproved overtime. On March 18, 2004 appellant received a letter of warning for being absent without leave (AWOL) on February 28, 2004. He had approved annual leave for that day but on February 27, 2004 he advised Mr. Bigam that he would not need to take leave after all. Appellant reported for work on February 28, 2004 but left before the workday was over. He stated that another supervisor asked him to report early on February 28, 2004 for overtime and he worked four hours and left. Mr. Bigam told appellant that he was expected to work the entire day because he had reported at the beginning of the workday. Appellant alleged that he was told not to load pallets on April 21, 2005 but other employees were allowed to do so. He did not follow his instructions not to load pallets and was given a seven-day suspension. On March 22, 2006 appellant received a seven-day suspension for unsatisfactory performance on February 28, 2006.[4] He had not prepared a piece of equipment for the mail processing crew arriving at 8:00 a.m. This was one of his regular daily duties.

Appellant alleged that on September 5, 2003 Mr. Hernandez grabbed his hand and twisted his wrist. Mr. Bigam stated that appellant had blocked Mr. Hernandez' access to a piece of equipment. Mr. Hernandez denied that he touched appellant. On September 26, 2003 appellant was suspended for seven days for failing to report the incident promptly to his supervisor.

Appellant filed grievances and Equal Employment Opportunity (EEO) complaints regarding his allegations of improper actions by management. None of the grievances or EEO decisions found that he had established his allegations.

Appellant alleged that he was constructively suspended from his job between June 8 and 26, 2004 because his request for light duty was denied due to lack of the proper forms and medical documentation. A Merit Systems Protection Board (MSPB) decision dated September 27, 2006 was issued in response to appellant's petition for enforcement of an earlier MSPB decision which found that the employing establishment constructively suspended appellant from his position by refusing his request for light duty because of medical reasons.[5]

[4] The suspension was later reduced to an official discussion in a July 17, 2006 settlement agreement. The agreement did not contain a finding of improper action by management.

[5] The MSPB decision reversed the constructive suspension and ordered the employing establishment to restore appellant's pay. The decision was based on the judge's finding that the employing establishment constructively suspended appellant without providing the procedural protections to which he was entitled. The employing establishment conceded that appellant had been constructively suspended for more than 14 days.

The petition for enforcement was denied on the grounds that appellant failed to establish that the employing establishment did not properly compensate him for the period of his suspension.

In reports dated November 25, 2002 and June 17, 2003, Dr. Pushpita D. Praminick, a psychiatrist, diagnosed a depressive disorder. He indicated that appellant did not know the reason for his depression. In progress notes dated November 17, 2005 to May 2, 2006, Dr. Lionel Guillaume noted that appellant was concerned about a suspension at work and harassment from his supervisor, including a statement that the supervisor was "going to change" him. He diagnosed an adjustment disorder and somatoform pain disorder. In an October 2, 2003 report, Robert Jordan, Ph.D., a licensed clinical psychologist, diagnosed adjustment disorder with mixed anxiety and depressed mood which appellant attributed to the September 5, 2003 incident when a coworker grabbed his hand and appellant was suspended. In reports dated October 14, 2003 to October 16, 2006, John Magee, Jr., Ph.D., a licensed clinical psychologist, diagnosed major depression related to the September 5, 2003 incident when a coworker grabbed his hand, having trouble getting along with individuals at work, having an increased workload due to the employing establishment being shorthanded and being discriminated against by his supervisors.

By decision dated January 23, 2006, the Office denied appellant's claim in OWCP File No. 162102400 on the grounds that he failed to establish that he sustained an emotional condition causally related to a compensable employment factor. Appellant requested an oral hearing that was held on October 19, 2006.

By decision dated April 21, 2006, the Office denied appellant's claim in OWCP File No. 162107390 on the grounds that he failed to establish that he sustained an emotional condition causally related to a compensable employment factor. Appellant requested an oral hearing that was held on October 19, 2006.

In two separate decisions dated November 28, 2006, an Office hearing representative affirmed the April 21, 2006 decision in OWCP File No. 162107390 and the January 23, 2006 decision in OWCP File No. 162102400.

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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[6] 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.[7]

[6] 5 U.S.C. §§ 8101-8193.

[7] *Lillian Cutler*, 28 ECAB 125 (1976).

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. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[8]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.[9] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[10] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[11] Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.[12] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[13]

ANALYSIS

Several of appellant's allegations are not established as factual. Appellant alleged that on September 5, 2003 Mr. Hernandez grabbed his hand and twisted his wrist. However, Mr. Hernandez denied that he touched appellant. There is insufficient evidence to establish that this incident occurred in the manner alleged by appellant. Appellant alleged that on October 23, 2003 Ms. Reyenga stated that, if he could not get along with Mr. Hernandez, he would find himself looking for a job. There is insufficient evidence that this incident occurred. The Board has held that a claimant's feelings of job insecurity are not a compensable factor of employment under the Act.[14] Appellant alleged that he was improperly denied sick leave for July 19, 2004, that on March 4, 2005 he was expected to do the work of four people when the employing establishment was shorthanded and that on April 13, 2006 Mr. Hawkins hung up on him when he telephoned to request copies of compensation forms. There is no corroborating evidence, such as witness statements establishing these allegations as factual. Appellant failed to support these allegations with specific, substantive, reliable and probative evidence. As there is insufficient

[8] *Michael Thomas Plante*, 44 ECAB 510 (1993).

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

[10] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[11] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[12] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

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

[14] *See Robert Breeden*, 57 ECAB 622 (2006); *Artice Dotson*, 41 ECAB 754 (1990).

evidence to establish these allegations as factual, they cannot be considered as possible compensable employment factors.

Appellant alleged that the employing establishment erred or acted abusively in several administrative or personnel matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.[15] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[16] Appellant alleged that management denied requests for sick leave and light-duty work. On June 9, 2004 his request for light duty was denied. Ms. Reyenga explained that she denied the request because appellant could perform his job with his right hand. There is insufficient evidence of error or abuse regarding this allegation. On November 12, 2004 and January 31, 2006 appellant was denied sick leave because he did not provide sufficient medical documentation. There is insufficient evidence that management erred or acted abusively in denying these requests for leave. Appellant alleged that on January 30, 2004 he was placed in nonduty status and instructed to submit a light-duty request from his physician before returning to work. Mr. Hawkins explained that he was concerned about the effect of appellant's medications on his performance of his tasks and requested a medical note explaining his work restrictions and his need for medications. There is insufficient evidence that Mr. Hawkins erred or acted abusively in instructing appellant to provide medical documentation relevant to his capability to perform his tasks. Appellant alleged that on February 18, 2004 Mr. Hawkins asked him to undergo a medical fitness-for-duty examination. He felt the request was improper because Mr. Hawkins is not a physician. However, appellant has not established error or abuse in Mr. Hawkins' request as it is a proper supervisory function to require medical proof of an employee's fitness for work. He alleged that management improperly denied his requests for schedule and job changes. Appellant alleged that beginning April 6, 2004 he was denied his bid job and in February 2005 he was denied a change in assignment to a higher level job. The employing establishment stated that it properly followed its procedures in making assignments and appellant provided insufficient evidence that management erred or acted abusively in scheduling schedules and job assignments. Appellant failed to establish that any of these allegations concerning administrative or personnel matters constitutes a compensable factor of employment.

Appellant alleged that management unfairly disciplined him. The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing, through supporting evidence, that the incidents or actions complained of were unreasonable.[17] A December 21, 2001 letter of warning was issued for improper conduct because appellant reported to work on December 2, 2001 although he was not scheduled to work. He has not established that management acted improperly by disciplining him for failure to adhere to his assigned work schedule. Therefore, this allegation is not a compensable employment factor. On March 29, 2003 Mr. Bigam asked Mr. Richardson if he would like to

[15] *Id.*

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

[17] *Id.*

work eight hours of overtime on March 30, 2003. Appellant was also scheduled to work on March 30, 2003 but he was not offered the opportunity to work eight hours of overtime. On May 30, 2003 he reported to work three hours early. On May 4, 2003 Mr. Bigam issued a seven-day suspension because appellant failed to follow instructions regarding his March 30, 2003 work schedule. Appellant stated that he reported early because he heard Mr. Bigam ask another employee to report three hours early and he assumed he could do the same because he was senior to that employee. However, he did not ask permission to work a different schedule on March 30, 2003. Therefore, management did not discipline him without cause and this allegation does not constitute a compensable employment factor. Appellant alleged that other employees were not disciplined when they performed unapproved overtime but he provided no details to support his allegation such as dates, names and what occurred. This allegation does not constitute a compensable factor of employment.

On March 18, 2004 appellant received a letter of warning for being AWOL on February 28, 2004. He had approved annual leave for February 28, 2004 but on February 27, 2004 he advised Mr. Bigam that he would not need to take leave after all. Appellant reported for work on February 28, 2004 but left before the workday was over. He stated that another supervisor asked him to report early on February 28, 2004 for overtime and he worked four hours and left. Mr. Bigam told appellant that he was expected to work the entire day because he had reported at the beginning of the workday. Because he did not follow proper procedures regarding his work schedule, management did not unfairly issue the letter of warning. Therefore, this allegation does not constitute a compensable employment factor. Appellant alleged that he was told not to load pallets on April 21, 2005 but other employees were allowed to do so. He did not follow his instructions and was given a seven-day suspension. Appellant did not establish that management acted unfairly in issuing a suspension for his failure to follow instructions. This allegation does not constitute a compensable factor of employment. On March 22, 2006 appellant received a seven-day suspension for unsatisfactory performance on February 28, 2006. He had not prepared a piece of equipment for the mail processing crew arriving at 8 a.m. This was one of his regular daily duties. The suspension was later reduced to an official discussion in a July 17, 2006 settlement agreement. However, the mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.[18] Appellant failed to establish that management acted unfairly in disciplining him for failing to perform his duties on February 28, 2006. Therefore, this allegation does not constitute a compensable employment factor. Appellant did not establish that any of his allegations regarding the imposition of disciplinary measures by management constitutes a compensable factor of employment.

Appellant alleged several instances of harassment by management. Mere perceptions of harassment or discrimination are not compensable under the Act. His burden of proof is not discharged with allegations alone. A claimant must support his allegations with probative and reliable evidence.[19] Appellant alleged that Mr. Hawkins harassed and discriminated against him. He alleged that he was held to a strict schedule but other employees were allowed to vary the times of their breaks. Mr. Friday stated that appellant was held to stricter standards at work than other employees, such as being held to a strict lunch and break schedule and being required to

[18] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[19] *Cyndia R. Harrill*, 55 ECAB 522 (2004).

perform certain tasks other employees were not required to perform. However, he provided no specific details such as dates, times and the individuals involved. Therefore, this statement is not sufficient to establish a compensable factor of employment. Appellant alleged that on February 18, 2006, Mr. Hawkins harassed him regarding his lunch break. The record shows that appellant did not go to lunch at the time Mr. Hawkins instructed and he received a 14-day suspension for improper conduct and failure to follow instructions. Appellant did not deny that he failed to follow instructions and there is insufficient evidence that Mr. Hawkins harassed appellant by issuing a suspension. This allegation does not constitute a compensable employment factor. Appellant alleged that on February 28, 2006 Mr. Hawkins verbally threatened him for not following instructions that appellant denied receiving. However, he provided insufficient details such as the instructions given by Mr. Hawkins, what he said that was threatening or any corroborating evidence concerning this allegation. Therefore, this allegation does not constitute a compensable employment factor. Appellant alleged that Mr. Hawkins criticized his job performance and stated that he was "going to stick it to" appellant. A witness stated that he heard Mr. Hawkins use the phrase, "stick it to [him]." However, there is insufficient evidence that this statement constituted harassment. The record shows that when appellant did not perform in a satisfactory manner, Mr. Hawkins imposed disciplinary measures. He did not harass appellant if his performance was unsatisfactory. There is insufficient evidence to establish any of these allegations regarding discipline as a compensable employment factor.

Appellant alleged that he was constructively suspended from his job between June 8 and 26, 2004 because his request for light duty was denied due to lack of the proper forms and medical documentation. A MSPB decision dated September 27, 2006 was issued in response to appellant's petition for enforcement of an earlier MSPB decision. The earlier decision held that the employing establishment constructively suspended appellant from his position by refusing his request for light duty because of medical reasons. The MSPB decision reversed the constructive suspension and ordered the employing establishment to restore appellant's pay. The decision was based on the judge's finding that the employing establishment constructively suspended appellant without providing the procedural protections to which he was entitled. The employing establishment conceded that appellant had been constructively suspended for more than 14 days. The Board finds that the MSPB decision is sufficient to establish that the constructive suspension between June 8 and 24, 2004, due to management's failure provide proper procedural protections, constitutes a compensable factor of employment. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence. The Board finds that the case must be remanded for the Office to consider whether the medical evidence establishes that appellant sustained an emotional condition causally related to the compensable employment factor.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment. Therefore, the Office must consider whether the medical evidence establishes a causal relationship between that employment factor and his emotional condition. The case is remanded for consideration of the medical evidence on the issue of whether appellant sustained an emotional condition causally related to this compensable employment factor.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 21, 2006 in OWCP File No. 162107390 and November 28, 2006 in OWCP File Nos. 162107390 and 162102400 are set aside and the case remanded for further action consistent with this decision.

Issued: September 25, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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