

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

S.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Augusta, GA, Employer**

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**Docket No. 09-987
Issued: December 24, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2009 appellant, through counsel, filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated December 9, 2008 denying appellant's claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

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

FACTUAL HISTORY

On June 9, 2008 appellant, then a 34-year-old mail handler, filed an occupational disease claim, alleging that he suffered from stress due to disparity in treatment because management was trying to persuade him to respond in a negative manner which would jeopardize his job. In a statement accompanying the claim, he alleged that on October 19, 2007 the plant manager, during employee appreciation day, stated that, if he feels you are not working to his standards,

that he will make it his goal to get you fired. Appellant also noted that on the same night Felton Mitchell accused him of stealing a tray of ribs and that when he told the plant manager, the plant manager indicated that he believed Mr. Mitchell. He noted that he was accused of leaving his post of duty to get seconds but that he was on break when he went and so the predisciplinary review was dismissed. Appellant noted that on November 27, 2007 he had a dispute with management about putting some equipment in a pallet room when he was told that it was not to go there. He requested at that time to see a union representative but said that he could not see one that day. Appellant noted that "Jack" took the mail and threw most of it on the floor and mixed it up and that he had to pick it up and put it back in order. He indicated that on November 29, 2007 he was instructed not to leave his specific area so he could not perform his duties effectively. Appellant noted an instance on December 3, 2007 when employees were called for a meeting to the flat sorter to ask opinions on what type of power equipment was needed and that when the supervisor asked appellant he stated he had no opinion and the supervisor stated, "good, we do n[o]t need it" and appellant believed that was to belittle him in front of his coworkers. He noted that he was given impossible time limits and was pulled to do other details. Appellant alleged that on April 15, 2008 Mr. Mitchell asked him when he would be finished and he told him he was not stating because anything he says is changed. He noted that after this incident he was escorted out of the building. Appellant indicated that he was called back on April 17, 2008 at which time the supervisor told him that he was making a paper trail to get him fired so he better start looking for a job. He noted that on May 5, 2008 he was issued a 14-day suspension due to this incident.

A May 5, 2008 notice of 14-calendar day suspension signed by Mr. Mitchell indicated that appellant was suspended because he failed to follow work instructions.¹ Appellant refused to sign the document. Furthermore, a letter of warning dated December 27, 2007 was submitted by the employing establishment to appellant due to irregular attendance.

By letter dated June 19, 2008, the employing establishment controverted appellant's claim.

By letter dated July 2, 2008, the Office asked appellant to answer various questions and provide further information.

In a statement dated July 22, 2008, Irene Castle stated that she witnessed appellant being accused of stealing a tray of ribs from the employee appreciation dinner held on October 19, 2007 by Mr. Mitchell. She noted that appellant was constantly being watched, followed and given restrictions that were not made on other handlers. Ms. Castle indicated that appellant was not able to do his job because he could not go to the dock to get mail but had to wait until other mail handlers brought him his mail, that he was constantly being paged, even when he was in his work area, and that appellant had to inform his supervisors of his whereabouts all the time. She argued that no employee should have to work under these severe and stressful conditions.

¹ The notice indicated that on April 15, 2008 appellant was asked to complete breakdown operation by 21:30, and that when Mr. Mitchell contacted him at 19:40 to check on progress, appellant stated that he was not saying anything. Appellant was told to report to the plant manager's office to discuss his failure to follow instructions. He did not respond to the plant manager's questions. Accordingly, appellant was placed on suspension.

In a statement dated July 28, 2008, S. Lance Weaver indicated that he was employed at the employing establishment from August 18, 2007 through March 14, 2008. He noted that at the October 9, 2007 employee appreciation dinner Jackie Watson, the plant manager, stated that he was going to get rid of employees he deemed unworthy. Mr. Weaver also noted that Mr. Mitchell catered this event and there was a discussion of the impropriety of a supervisor catering such an event, which in turn caused retaliatory actions by supervision towards those who questioned the impropriety of the act. He noted that on November 27, 2007 he was working automation when he saw Mr. Watson, the plant manager, approach the work area where appellant was working and confronted him on several occasions throughout the night. Mr. Weaver noted that Mr. Watson was very demonstrative as he spoke to appellant and often stood and glared at him while he performed his work. He noted that on December 3, 2007 he recalled Johnnie Brown and Mr. Mitchell arguing in the area that appellant was working. Mr. Weaver also noted that there were many other occasions where he noticed appellant being harangued by Mr. Watson and Mr. Mitchell but they did not recall specific times. He also stated that Mr. Mitchell and Mr. Watson created a hostile work environment and perpetuated a scheme of retaliation and destruction on those who oppose them. In a second statement dated September 11, 2008, Mr. Weaver stated that his first statement was suspiciously lost by management. He indicated that he was present at the employee appreciation dinner when Mr. Watson did make a statement referring to employees he was working hard towards firing because they did not fit the mold of what an employee should be and that he would get back with the employees at a later date to discuss the matter. Mr. Weaver again noted that he constantly saw Mr. Watson and Mr. Mitchell going to the area of appellant and speaking to him in a visibly demonstrative manner. He noted that he witnessed this because his work area was adjacent to that of appellant and that he was also the victim of harassment by Mr. Watson and Mr. Mitchell.

An August 20, 2008 statement, completed by a LaJuana D. Mercer using responses by Mr. Watson, the plant manager, indicated that employees were told that if they were not coming to work they would be terminated. Mr. Watson also stated that appellant was investigated because he attended the employee appreciation dinner but later left his operation without authorization. He indicated that appellant could not work without supervision. Mr. Watson noted that appellant continues to give excuses why he could not clear his mail timely. The employing establishment denied that mail was thrown on the floor. Mr. Watson told Ms. Mercer that he did not belittle appellant with regard to the December 3, 2007 incident, rather appellant belittled himself with his own statement. He denied that he told appellant he was making a paper trail in an effort to get him fired.

Medical evidence was submitted by appellant's treating physician, Dr. Reginald V. Brown. In notes dated April 21, May 1 and September 9, 2008, Dr. Brown indicated that appellant told him that he was under increased stress on his job recently due to problems with his supervisor. He stated that appellant felt he was being set up to be fired in the near future. In a May 27, 2008 report, Dr. Brown indicated that he had been treating appellant for stress and depression since April 21, 2008. He noted that appellant reported that he had undergone workplace harassment since November 2007. Dr. Brown noted that appellant had no prior history of depression or psychiatric illness. He opined that appellant suffered from prolonged depression and anxiety. Dr. Brown opined, "It is my opinion that [appellant] has severe depression with anxiety as a direct result of working in a hostile workplace."

By decision dated December 9, 2008, the Office denied appellant's claim. It found that appellant had established compensable factors of employment but there was insufficient medical evidence to establish a factor of employment caused or aggravated by October 19 or December 3, 2007. The factors were: being accused of leaving his area of operation without permission on October 19, 2007; accused of stealing a tray of ribs during the employee appreciation dinner; and the plant manager responded to appellant's "no opinion" response at an employee meeting.

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 the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² 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.³

Appellant 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 employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.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 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

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

ANALYSIS

Initially, the Board finds that certain allegations made by appellant are not established as factual. These include appellant's allegations that mail was thrown on the floor, that he was denied the right to see a union representative, that he was given impossible time limits and that his supervisor told appellant that he was making a paper trail in order to get him fired. Appellant's burden of proof is not discharged with allegations alone. He must support his allegations with probative and reliable evidence.⁸ As appellant has not done so here, he has not met his burden of proof.

Certain allegations made by appellant concern personnel or administrative matters. Appellant was suspended for 14 days on April 15, 2008 for "failure to follow instructions/unsatisfactory work performance" due to appellant's failure to answer questions by his supervisor and the plant manager. He was also issued a letter of warning for irregular attendance. 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.⁹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ There is no evidence that the Office acted unreasonably in suspending appellant for his refusal to answer questions with regard to his work or for irregular attendance.

Allegations were made by appellant and supported by witness statements that appellant's performance was unfairly monitored by his supervisors. Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.¹¹ The Board finds that the evidence does not show that the employing establishment acted unreasonably in its effort to monitor appellant's work as a way of improving his job performance. Furthermore, appellant's objections to the manner in which he was assigned to pick up mail is not compensable as it involves an administrative matter in the assignment of work duties.¹² Not being permitted to work in a particular environment or to hold a particular position is not compensable.¹³

⁷ *Id.*

⁸ *Cyndia R. Harrill*, 55 ECAB 522 (2004).

⁹ *Id.*

¹⁰ *Janice I. Moore*, 53 ECAB 777 (2002).

¹¹ *See Dennis J. Balogh*, 52 ECAB 232 (2001); *see also John Polito*, 50 ECAB 347 (1999).

¹² *Kim Nguyen* 53 ECAB 127 (2001).

¹³ *Peter D. Butt*, 56 ECAB 117 (2004).

Appellant alleges that at the employee appreciation dinner, the plant manager stated that if he felt an employee was not living up to his work standards, he would make it his goal to fire that employee. Mr. Weaver supported that this event occurred in his statement. However, not every statement uttered in the workplace will give rise to a compensable factor.¹⁴ The Board notes that this statement was not directed to appellant but rather to all of the attendees at the dinner. Under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated, in that it resulted from his perceptions regarding this statement.¹⁵

However, the Office found three compensable work factors: (1) that appellant was accused of leaving his operation area without permission on October 19, 2007; (2) that appellant was accused of stealing a tray of ribs from the employee appreciation dinner; and (3) that on December 3, 2007 the plant manager responded to appellant's "no opinion" response at an employee meeting. Accordingly, appellant must submit rationalized medical opinion evidence establishing that his claimed emotional condition is causally related to his established work factors.

There is no medical evidence in the record that establishes this causal relationship. Appellant did submit medical reports by Dr. Brown noting that appellant was experiencing stress and anxiety as a result of his employment. However, Dr. Brown never exhibited any specific knowledge or understanding with regard to appellant's work situation, nor did he ever mention the compensable work factors. His general statements largely consisted of repeating appellant's allegations with regard to general issues at her workplace. Therefore Dr. Brown's opinions are insufficient to establish a causal relationship between the listed compensable factors and appellant's emotional condition.¹⁶

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

¹⁴ *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹⁵ *V. W.*, 58 ECAB ____ (Docket No. 07-234, issued March 22, 2007).

¹⁶ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodham*, 41 ECAB 345, 352 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2008 is affirmed.

Issued: December 24, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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