United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 08-1883**
	)	**Issued: January 22, 2009**
U.S. POSTAL SERVICE, GRANTVILLE STATION, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 25, 2008 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated March 27, 2008 that denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a stress-related condition causally related to his federal employment.

FACTUAL HISTORY

On November 17, 2006 appellant, then a 49-year-old letter carrier, filed a Form CA-2, occupational disease claim, alleging that employment-related stress caused a rapid heart rate, elevated blood pressure and dyspepsia. He stated that he was harassed in retaliation for filing an Equal Employment Opportunity (EEO) complaint and a number of grievances. Appellant stopped work on November 14, 2006. In an attached statement, he alleged that his supervisors refused to allow him to work eight hours daily and that he injured his knees at work and required

surgery. On November 9, 2006 two supervisors "ganged up" on appellant and yelled at him for 20 minutes. On November 10, 2006 appellant was called in for a 20-minute investigative interview and on November 13, 2006 he was given a letter of warning. He went to the doctor on November 14, 2006.

The employing establishment controverted the claim. In a November 27, 2006 statement, Rod Sotomayor, manager of customer services, advised that appellant was disciplined because he continually failed to follow instructions and postal regulations or to regularly attend work and asserted that he was not disciplined for filing an EEO claim. He related that appellant was given a letter of warning for bullying and intimidating other employees and was sent home because the medical evidence provided was insufficient and he only wanted to perform specific work duties. Mr. Sotomayor noted that appellant's claim for a knee injury had been denied.[1]

In reports dated November 14 and December 13, 2006, Dr. Joseph P. Matista, Board-certified in family medicine, noted appellant's history of harassment at work and diagnosed tachycardia and elevated blood pressure due to his work environment. He noted that appellant was scheduled for knee surgery on December 4, 2006.

By decision dated January 12, 2007, the Office denied the claim on the grounds that fact of injury had not been established.

On December 26, 2007 appellant requested reconsideration. In a December 18, 2006 report, Dr. Annette Pozos, a Board-certified psychiatrist, noted that appellant recently underwent a hip replacement and had encountered stress at work. She diagnosed an adjustment disorder with mixed features. Appellant submitted copies of e-mails and statements from coworkers John Piontek, Aaron Lack, and Michael J. Althaus, and shop stewards Jimmy Dixon and Michael Freedman regarding what was alleged as a hostile atmosphere at the employing establishment and incidents that occurred in March 2007. Darlene Budd, a coworker, provided an undated statement that she overheard appellant being harangued at work. Appellant submitted a December 6, 2006 grievance settlement agreement noting that he was able to perform the full functions of his bid assignment and his bid would not be forfeit; page 1 of a step B grievance decision dated March 20, 2007 finding that a November 20, 2006 letter of warning did not rise to the level of a hostile work environment and was reduced to a discussion; and page 1 of a step B grievance decision dated April 2, 2007 regarding an October 25, 2006 incident finding that the union was unable to substantiate that Mr. Sotomayor violated the national agreement by throwing an ink pin.

By decision dated March 27, 2008, the Office denied modification of the January 12, 2007 decision. In a second March 27, 2008 decision, it modified the prior decision to find that appellant's claim was denied because he had not established that he sustained a stress-related condition in the performance of duty.

[1] By decision dated September 9, 2008, Docket No. 08-902, the Board affirmed an Office decision dated November 5, 2007 in which the Office denied appellant's reconsideration request. The Board found that the Office properly refused to reopen appellant's claim for bilateral knee injuries.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional or stress-related 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] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[3] 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.[4]

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*,[5] 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.[6] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[7] 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.[8] 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.[9]

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.[10] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its

---

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

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

[4] *Id.*

[5] 28 ECAB 125 (1976).

[6] 5 U.S.C. §§ 8101-8193.

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

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

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

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

administrative or personnel responsibilities, such action will be considered a compensable employment factor.[11]

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. 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 that the harassment occurred with probative and reliable evidence.[12] With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[13]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment. Appellant alleged that he was inappropriately disciplined, that he was harassed by employing establishment management, and that he was retaliated against for filing grievances and an EEO claim. However, he submitted insufficient evidence to substantiate these allegations. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made as opposed to mere perceptions.[14]

Appellant alleged that he was inappropriately disciplined by having to attend counseling meetings on November 9 and 10, 2006 and given a letter of warning on November 13, 2006. These allegations pertain to administrative and personnel matters involving the discipline of employees and are not compensable unless the employee shows that management acted unreasonably.[15] The March 20, 2007 grievance decision reduced the November 13, 2006 letter of warning to a discussion. It does not contain any finding of wrongdoing. The Board has held that the mere fact that personnel actions are later modified or rescinded, does not, in and of itself, establish error or abuse.[16] The evidence of record does not substantiate that he was inappropriately counseled on November 9 and 10, 2006. Mr. Sotomayor reported that he

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

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

[13] *Beverly R. Jones*, 55 ECAB 411 (2004).

[14] *J.F.*, 59 ECAB ____ (Docket No. 07-308, issued January 25, 2008).

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

[16] *Dennis J. Balogh*, *supra* note 3.

counseled appellant after he ignored instructions and agency policies. The Board finds that there is no evidence of error or abuse in these administrative matters. Appellant failed to establish these alleged factors as compensable.[17]

Appellant also claimed that he was retaliated against because he had filed grievances and an EEO claim. In assessing the evidence, the Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[18] Appellant did not submit a final EEO decision. While he submitted a December 6, 2006 and partial copies of two step B grievance decisions, there was no finding that the employing establishment committed error or abuse. Appellant also generally alleged that he was harassed while at the employing establishment. However, mere perceptions of harassment or discrimination are not compensable under the Act.[19] 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.[20] As to the statements of his coworkers, none provided detailed information regarding the incidents alleged by appellant and therefore do not establish his assertions.[21] Ms. Budd's statement, too, is insufficient to establish harassment. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.[22] Ms. Budd, however, did not identify a date in which she overhead the discussion described, and the mere fact that a supervisor or employee may raise his voice during the course of a conversation does not warrant a finding of verbal abuse.[23] Appellant therefore failed to establish a factual basis for his claim of harassment and retaliation by probative and reliable evidence.

The record lacks probative evidence to support appellant's claim. The Board finds that appellant has not established a compensable employment factor of employment. Appellant therefore did not establish that he sustained an emotional condition in the performance of duty as alleged.[24]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty.

---

[17] *See Barbara J. Latham*, 53 ECAB 316 (2002).

[18] *Michael L. Deas*, 53 ECAB 208 (2001).

[19] *James E. Norris, supra* note 12.

[20] *Id.*

[21] *See Mary J. Summers*, 55 ECAB 730 (2004).

[22] *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

[23] *Joe M. Hagewood*, 56 ECAB 479 (2005).

[24] As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the amended decision of the Office of Workers' Compensation Programs dated March 27, 2008 be affirmed.

Issued: January 22, 2009
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