United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 08-1468**
	)	**Issued: March 24, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Mesquite, TX, Employer	)	

Appearances:
Michael C. Paul, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 23, 2008 appellant, through his representative, filed a timely appeal from the January 18, 2008 merit decision of the Office of Workers' Compensation Programs, which denied compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 28, 2006 appellant, then a 49-year-old letter carrier, filed a claim alleging that his depression, anxiety and lack of self-esteem were a result of his federal employment: "Oppressed by Postmaster (constant threat of discipline, loss of advancement opportunity, unrealistic expectations) doing more and more under duress. Workforce allowed to badger, harass, slander -- me! Causing hostile work environment." In a supporting statement, he

implicated "manufactured stress hostile work environment, continuing threats of discipline, held to higher standards, mostly the discrimination!" Under the previous management in 1993, 1995 and 1997, appellant stated, "same scenario, manufactured stress, higher standards than all other offices, discrimination, threats of discipline." He first became aware of his illness on September 30, 2005.

The employer controverted appellant's claim. The employer stated that he was detailed on a higher level several times during the period. The employer stated that the work environment did not change and that discipline was given to individuals as needed for corrective action. The employer added that it held appellant to the same standards as all other employees.

On August 9, 2006 the Office asked appellant to describe in detail the employment conditions or incident that he believed contributed to his illness and to be as specific as possible. It also asked appellant to provide statements from any person who could verify his allegations.

In an August 3, 2006 statement to the employer's Office of the Inspector General (OIG), appellant explained that before September 30, 2005 he had joy in his life for the first time in a long time and everything was working out as planned. Then a new administrator came in with a reputation for being tough "and everything turned upside down." Appellant was required to go through an audit, he subsequently returned to a route and he was then held to higher standards than the rest of the workforce. He believed that he was being systematically discredited. When the workforce realized he was on the outs with management, they made innuendos and badgered and harassed him.

Over the years, appellant pursued allegations against management through the grievance procedure and the Equal Employment Opportunity (EEO) Commission. He submitted many documents relating to these administrative claims.

In a decision dated September 15, 2006, the Office denied appellant's claim for compensation benefits. Noting no independent evidence corroborating his allegations, the Office found that appellant failed to establish a factual basis for his claim.

Appellant, through his representative, requested reconsideration. He asked the Office for assistance in gathering information that was in the hands of the employer, in particular, the home addresses of witnesses. Appellant asked the Office to solicit sworn statements from four named individuals and to request a list of all letter carriers from that branch, including their names and either a home or office address where they might be reached by mail.

Appellant submitted, among other things, a statement signed by Ricky L. Barlett, a union representative:

> "I was a witness of a meeting between O.I.G. and [appellant]. The O.I.G. asked [him] many questions about the reason why he was claiming he was stressed at work. The man representing the O.I.G. was very rude and verbally abused [appellant] many times. There was a few times that I had to calm him down because of his harshness toward [appellant]. I can[no]t remember anything else."

Appellant also submitted a September 12, 2007 statement from "Malcolm":

> "Yes, there was a lot of hostility between the Postmaster … and [appellant]. The way I remember it was when he went out on sick leave for hip problems and then it just elevated pass the boiling point. [Appellant] came back some [?] and management stayed on him and harassed him for any little thing they could make up. Management just would n[o]t give him any room to breathe. All carriers were doing the same things that management was getting on [appellant] about in the office and street. [Appellant] is a good employee and coworker, but management would n[o]t let him be that or be a good leader in management."

Appellant submitted union publications to corroborate workplace hostility. He submitted a newspaper article from the year 2000 about the late delivery of mail by appellant's workplace and a rash of resignations and injuries since January of that year. Appellant, through his attorney, argued that he had cited several compensable work factors and had provided corroboration in the form of statements and documentation that the cited events and conditions did in fact occur, including the building stress of overwork, the confrontations with and the harassment of management, the unjust investigation culminating in the OIG special agent's intimidating and physically threatening behavior.

In a decision dated January 18, 2008, the Office reviewed the merits of appellant's case and denied modification of its prior decision. It found that the evidence he submitted failed to overcome the deficiencies in his claim.

On appeal, appellant criticized the Office's January 18, 2008 decision, including the failure to acknowledge Mr. Barlett's statement. He asks the Board to give his case a thorough review, to consider all the evidence, to answer each allegation of failure to abide by procedure and regulation and to explain fully the ensuing decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] But workers' compensation does not cover each and every injury or illness that is somehow related to employment.[2] An employee's emotional reaction to an administrative or personnel matter is generally not covered. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[3]

[1] 5 U.S.C. § 8102(a).

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

[3] *Margreate Lublin*, 44 ECAB 945 (1993).

Perceptions alone are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.[4]

ANALYSIS

At the outset, it is useful to approach this case from a broad perspective. When appellant filed his June 28, 2006 claim for compensation, he stated that he first became aware of his illness on September 30, 2005. Before September 30, 2005, as he explained to the OIG, he had joy in his life for the first time in a long time and everything was working out as planned. So the scope of the claim he filed and the scope of that claim's adjudication, begins with events on and after September 30, 2005. It is clear from appellant's supporting statement and from the impressive amount of documentation he submitted, that he had essentially the same complaints on prior occasions in 1993, 1995 and 1997. But those complaints are not particularly germane to the claim he filed on June 28, 2006. Appellant's June 28, 2006 claim for compensation will stand on its own merits.

Appellant attributes his depression, anxiety and issues of self-esteem to the conduct of his employer, to the arrival of a new administrator who came in with a reputation for being tough. The problem is that workers' compensation does not cover such claims as a general rule. Emotional injuries that arise from administrative or personnel issues generally are outside the scope of the Act. So to the extent that appellant implicates the actions of his employer, his claim fails.

The Board recognizes an exception where the employer commits a specific error or abuse. But to bring his claim within this exception, appellant must establish a specific administrative error or abuse by the weight of the factual evidence. This is where his claim fails. It is not enough for appellant to make general allegations of hostility and discrimination. Allegations of oppression, threats of discipline, loss of advancement opportunity, unrealistic expectations and being held to higher standards are too vague to establish a compensable factor of employment. Appellant has pursued specific allegations of managerial misconduct through grievances and EEO complaints. Indeed, the bulk of his substantial case record consists of documents from these administrative claims.[5] But it does not appear that appellant has met any success in proving his allegations. He has submitted no finding or final decision holding that the employer committed any of the errors or abuses alleged. Should appellant receive such a finding or decision, he may submit that evidence to the Office for the purpose of laying a factual

[4] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[5] On September 11, 2006 the Office received over 1,300 pages of documents relating to appellant's various grievances and EEO complaints. These document do not serve appellant's interest in establishing a compensable factor of employment, in part because allegations pertaining to errors or abuses or employment factors prior to September 30, 2005 are not particularly relevant to his June 28, 2006 claim for compensation and in part because neither the Office nor the Board is the proper forum for adjudicating grievances and EEO complaints.

foundation for his entitlement to workers' compensation. Without that finding or decision, the record is basically one of unsubstantiated allegations.[6]

Appellant, through his attorney, argues that his statements should stand as facts. But the employer has controverted the claim, stating that appellant was detailed on a higher level several times during the period, that the work environment did not change, that discipline was given as needed and that appellant was held to the same standards as all other employees. Even without the employer's controversion, appellant has the burden to substantiate or corroborate his allegations with probative and reliable evidence.[7] The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[8]

Appellant points specifically to an exchange in which his supervisor, Skip French, stated, "It never ends, does it?" To which he responded: "I did n[o]t start this." Mr. French replied: "I know who [wi]ll end it." Appellant argues that this was a threat, "an ominous threat implying strongly a future bad conclusion for the claimant based on [Mr.] French's supervisory authority." The Board is not convinced that the supervisor's reply constitutes a compensable factor of employment. Oral reprimands and disciplinary matters are not generally covered by workers' compensation.[9] But, more to the point, it appears this incident occurred some time before July 15, 1997, when appellant signed a statement describing the interaction. So this incident occurred well outside the scope of his June 28, 2006 claim for compensation.

Appellant submitted a statement from Mr. Barlett, a union representative who witnessed the interaction between appellant and an OIG special agent. Mr. Barlett stated that the agent was "very rude and verbally abused" appellant many times. The trouble with such statements, whether they come from appellant or a witness, is that they do not provide sufficient detail to permit an informed assessment of the truth of the matter asserted. The witness never explained how the agent was rude or verbally abusive, never mentioned what was said or how exactly the agent said it. The only thing the witness offered was his subjective opinion that the agent treated appellant harshly. The Board finds that this evidence has diminished probative value.

The same deficiency is found in the September 12, 2007 statement from "Malcolm." The witness asserted hostility and harassment without supplying the details necessary to allow an informed assessment of his perception. This evidence is far too vague to establish a compensable factor of employment.

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[6] A settlement, whereby the parties agree to resolve a complaint without admission or prejudice to either side, is no proof the complaint had merit.

[7] Appellant's attorney cites to cases involving injuries caused by physical acts, whereas emotional condition claims usually center on an employee's perception of treatment. In such claims, a claimant's unsubstantiated allegations are generally held to be insufficient to establish a compensable factor of employment. *See Ruthie M. Evans*, *supra* note 4.

[8] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[9] *See Barbara E. Hamm*, 45 ECAB 843 (1994); *Joseph F. McHale*, 45 ECAB 669 (1994).

Appellant argues that several publications support his claim of hostility and overwork. But none of this evidence addresses him specifically or any error or abuse directed towards him. The evidence is, at best, of general application and is not particularly supportive of his claim for compensation. The newspaper article comes from the year 2000, again, well before the scope of his June 28, 2006 claim.

On his claim form, appellant faulted the employer for allowing the workforce to badger, harass and slander him. But he submitted no specific proof that coworkers actually badgered, harassed or slandered him or that the employer in fact allowed coworkers to do so.

The Board finds that appellant has not met his burden of proof to establish a factual basis for his claim. Appellant has not submitted probative and reliable factual evidence to establish error or abuse in any administrative or personnel matter. Without proof of error or abuse, he has not demonstrated that his claim falls within the scope of workers' compensation.[10] The Board will therefore affirm the Office's January 18, 2008 decision denying his June 28, 2006 claim for benefits.

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.

[10] It is for this reason that the Office need not review the medical evidence of causal relationship. Whether an incident at work caused or aggravated a diagnosed medical condition does not become an issue until the claimant establishes that the incident is compensable and comes within the scope of workers' compensation. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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