United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 09-1130**
	)	**Issued: April 26, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 19, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated May 19, 2008 and February 11, 2009 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 an emotional condition in the performance of duty causally related to factors of his federal employment. On appeal, through his attorney, appellant argues that he had several confrontations with the manager of distribution operations, Nicholas Campagno, who continually harassed appellant.

FACTUAL HISTORY

On April 4, 2008 appellant, then a 54-year-old supervisor of distribution operations, filed a Form CA-2, occupational disease claim, alleging that factors of employment caused anxiety, panic attacks and depression. He submitted reports dated February 19, March 11 and April 10,

2008, in which Dr. J. Ranalli, an osteopath, diagnosed acute anxiety, reactive depression and panic attacks and checked a form box "yes," indicating that the condition was employment related, stating "work is main stressor that started and aggravated the condition." Dr. Ranalli advised that appellant was totally disabled from February 12, 2008 and would be off work indefinitely. In a March 18, 2008 report, Samuel A. Bobrow, Ph.D., noted appellant's complaints that for six months he had been harassed by his supervisor and described five specific factors that appellant felt caused stress.[1] He provided results of mental status examination and diagnosed generalized anxiety disorder. Dr. Bobrow advised that appellant was totally disabled and concluded that the critical factor that caused his condition was that "he saw that the rules no longer worked ... he was being charged and convicted without due process." On an Office form report dated April 4, 2008, he checked a box "yes," indicating that the diagnosed condition was employment related, stating "his condition was caused by his supervisor's actions which did not follow disciplinary rules." Dr. Bobrow advised that appellant could not work or return to a position under his current supervisors.

By letter dated April 18, 2008, the Office informed appellant of the type of evidence needed to support his claim. In a statement dated April 4, 2008, received on April 21, 2008, appellant described five incidents that caused his condition: (1) that on August 15, 2007 Nicholas Campagno, lead manager, distribution operations, falsely accused him of improperly paying an employee and issued a letter of suspension when it was later discovered that another supervisor entered the payment; (2) that in January 2008 appellant was absent for two weeks due to a nonwork-related back injury, and called in to the employing establishment on three occasions, but that, when he returned to work, Mr. Campagno claimed that he had not called and charged him as absent without leave (AWOL), but that another manager, Tim Oswald, fixed his time; (3) that on February 6, 2008 he was called to a meeting with Mr. Campagno who handed him a letter of warning (LOW) in lieu of time off suspension because a trailer of mail had not been properly processed. Appellant stated that Mr. Campagno erred by not affording him representation and was not interested in his explanation; (4) in February 2008 he and one of his managers was called to a meeting with the plant manager and one of her supervisors, Gerald T. Golden, manager, distribution operations, because one of the employees appellant supervised had left an inappropriate voice mail on a supervisor's telephone. Appellant stated that the plant manager belittled, embarrassed and humiliated him at the meeting, telling him he was a poor supervisor, and that Mr. Golden advised him that he would report to the plant manager on every employee under his direction as a result of the voicemail; (5) and that on February 15, 2008 he received a certified letter from Mr. Campagno stating that appellant had been absent from work for more than a week and failed to provide acceptable medical documentation, whereas appellant alleged that he had sent in three doctor's notes.

In an April 15, 2008 statement, Mr. Campagno controverted the claim. He advised that appellant was absent from work for nonwork-related reasons prior to the February 2008 corrective action, and noted that he had previously received corrective actions for job performance in November 2003 and August 2007. Mr. Campagno related that in the past management had failed in many instances to issue corrective action to supervisors when necessary, as in appellant's case. He noted specific incidents of supervisory failure on

[1] *See* discussion *infra*.

appellant's part, including that he let employees repeatedly leave the facility during work hours, and described appellant's responsibilities at the receiving dock, noting that on February 1, 2008 he signed a certifying document but failed to walk the dock, "in essence falsifying the information the document contained," which resulted in a massive first class mail delivery failure.

By letter dated April 15, 2008, Mr. Golden advised that his responsibilities including management of light/limited duty, attendance control, and facility access and egress. He advised that, during the period June 24, 2006 to February 2, 2008, 101 gate activity reports, generated when it appeared that an employee had left the facility while on the clock or used an unsecured door for access/egress, were sent to appellant regarding employees under his supervision, that appellant failed to provide a response on 58 occasions, and that a number of responses were not credible. Mr. Golden stated that, on or about March 31, 2008,[2] one of appellant's employees, John De La Pena, telephoned Mr. Golden and challenged his authority to report access/egress activity, and as a result a meeting was held with appellant, Mr. Golden and the plant manager. He related that during this meeting appellant acknowledged that he permitted his employees to leave the facility and extend their break period, contrary to policy. Mr. Golden reported that appellant had recently received formal discipline for another performance failure, and the plant manager advised him that his performance was unacceptable and he would be observed daily until an improvement was made. He contended that appellant's portrayal of the meeting was a misrepresentation of reality, and that neither he nor his employees were singled out and that his performance failures were addressed through a formal disciplinary process.

Dr. Bobrow provided an attending physician's report dated May 15, 2008 in which he diagnosed major depression, single episode, moderate and checked a form box "yes," indicating the condition was employment related, stating "harassment by supervisors."

By decision dated May 19, 2008, the Office denied the claim, and on June 10, 2008 appellant, through counsel, requested a hearing, and submitted a March 8, 2008 statement in which Ron Ward, a National Association of Postal Supervisors representative, advised that on August 8, 2007 he represented appellant at a meeting with Mr. Campagno regarding the termination of one of appellant's employees, and that, after the meeting, Mr. Campagno accused appellant of continuing to pay an employee who was out on suspension, but that, upon searching computer records, it was determined that someone else had entered the pay data and Mr. Campagno was incorrect. In a June 24, 2008 statement, Mr. Ward advised that appellant was issued a seven-day suspension on February 6, 2008 and that a mediation request was denied on timeliness grounds.

In a March 17, 2008 statement, received on July 21, 2009, appellant again related the events of August 15, 2007, January 2008 and February 6, 2008. By report dated March 28, 2008, Mr. De La Pena advised that on January 31, 2008 he became upset and frustrated because appellant questioned him because it had been reported that he was out of the building for an unauthorized period of time, but was actually sent out to deliver or retrieve mail that was missent. He stated that he then called Mr. Golden and voiced his opinion but did not threaten

[2] The telephone call was apparently made on January 31, 2008.

Mr. Golden. In a June 17, 2008 statement, appellant rebutted Mr. Campagno's statement, stating that it was filled with half-truths and total fabrication, noting that he was off work in December 2007 due to a back injury, in January due to his wife's and mother's illnesses. He provided a mediation settlement showing that the August 2007 seven-day suspension was reduced to a LOW, stated that no corrective action took place in November 2003, and disputed Mr. Campagno's statement of events regarding the February 6, 2008 incident regarding the mail trailer that resulted in a letter of suspension. Appellant noted that the letter of suspension was being challenged in an Equal Employment Opportunity (EEO) Commission hearing. He also rebutted Mr. Golden's statement, alleging that the distorted events surrounding employees leaving the building and the telephone call from Mr. De La Pena.

On July 21, 2008 appellant's attorney forwarded additional records from Dr. Bobrow including treatment notes dated March 28 to May 15, 2008 in which he noted that appellant continued to be anxious and depressed and felt he was dealing with tremendous unfairness. In a July 10, 2008 report, Dr. Bobrow advised that when appellant read Mr. Campagno's statement, he became extremely agitated and felt the statement was additional harassment by management.

At the hearing, held on October 28, 2008, appellant described his employment history and discussed the events he deemed compensable, stated that the February 2008 LOW was not finalized and described his medical condition. His attorney argued that appellant established compensable factors of employment, and submitted clock ring statements and a copy of a February 5, 2008 LOW. In a May 23, 2008 letter, received on November 10, 2008, Mr. Oswald advised that from November 2, 2007 through February 1, 2008 he was detailed as a manager of distribution operations and that appellant reported to him.

By letter dated December 5, 2008, Mr. Campagno disputed appellant's hearing testimony, noting that he received a LOW on November 3, 2003 for failure to perform supervisory duties, failed to instruct his employees on proper call out procedures and failed to act when advised of his responsibilities concerning incarcerated employees. He stated that he apologized to appellant regarding the August 2007 incident, and that in December 2007 he was not informed that appellant had called in, and that in February 2008 appellant failed to follow proper platform procedure. In December 11, 2008 statements, appellant disagreed with Mr. Campagno's December 5, 2008 letter, noting that he had never apologized and reiterated his hearing testimony about the claimed factors of employment. Mr. Ward advised that Mr. Campagno had not apologized, and that he entered appellant as AWOL on December 1, 7 and 8, 2008, all of which were changed by Mr. Oswald.

By decision dated February 11, 2009, an Office hearing representative affirmed the May 18, 2008 decision on the grounds that appellant failed to establish a compensable factor of employment.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional 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.[3] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[4] 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.[5]

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*,[6] 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.[7] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[8] 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.[9] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[10] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[11] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[12]

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

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

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

[5] *Id.*

[6] 28 ECAB 125 (1976).

[7] 5 U.S.C. §§ 8101-8193.

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

[9] *Lillian Cutler, supra* note 6.

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

[11] *M.D.*, 59 ECAB ___ (Docket No. 07-908, issued November 19, 2007).

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

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

administrative or personnel responsibilities, such action will be considered a compensable employment factor.[14]

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.[15] 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.[16]

ANALYSIS

When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[17] In this instance, appellant alleged that his claimed condition arose, in part, because he had to attend a meeting in February 2008 in which the performance of one of the employees he supervised was discussed. The Board finds that the evidence of record is sufficient to establish that appellant was in the performance of his regular managerial duties while attending the meeting and his required attendance at the meeting is therefore a *Cutler* factor.[18] As such, it is a compensable factor of employment. Appellant, however, failed to establish that he was harassed at the meeting or at any other time because he failed to submit sufficient evidence to establish that harassment did in fact occur.

Regarding his claim of harassment at the February 2008, meeting, the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employees will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[19] Mr. Golden explained that neither appellant nor his employee was singled out,

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

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

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

[17] *Penelope C. Owens*, 54 ECAB 684 (2003); *see Lillian Cutler*, *supra* note 6.

[18] *Lillian Cutler*, *supra* note 6.

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

and that appellant's performance failures were properly addressed. Appellant submitted nothing to support his allegations and therefore did not establish a compensable factor of employment.

Regarding the August 2007 letter of suspension and the February 2008 LOW, reactions to disciplinary matters pertain to actions taken in an administrative capacity and are not compensable unless it is established that the employing establishment erred or acted abusively in such capacity.[20] In this case, the August 2007 suspension was reduced to a LOW, and the February 2008 LOW was not finalized. The mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.[21] The employing establishment explained the reasoning behind the discipline, and appellant submitted nothing to show that the letters were issued in error. Appellant also submitted insufficient evidence to establish that Mr. Campagno acted unreasonably in the matter of an employee being improperly paid. Investigations are an administrative function of the employing establishment that do not involve an employee's regular or specially assigned employment duties are not considered to be an employment factor where the evidence does not disclose error or abuse on the part of the employing establishment.[22] While Mr. Campagno was in error, the Board finds this an administrative error that does not rise to the level of error or abuse contemplated by the Act. It was not unreasonable for management to investigate an employee's improper pay. Appellant submitted insufficient supportive evidence to show that Mr. Campagno or other employing establishment management personnel committed error or abuse in these administrative matters.

Regarding appellant's contention that he was inappropriately placed in AWOL status when he had properly called Mr. Oswald to report that he was sick in January 2008, although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee.[23] While appellant asserted that Mr. Oswald later changed the AWOL to sick leave, he did not provide a statement in support of his contention that he had properly called in. Mr. Oswald's May 23, 2008 statement merely reported that he had been appellant's supervisor during this period. Similarly, it was not unreasonable for Mr. Campagno to request medical documentation to support appellant's continued absence in February 2008. Appellant, therefore, did not establish these claimed factors as compensable.

Appellant also asserted that he had filed an EEO Commission claim. In assessing the evidence, the Board has held that grievances and EEO Commission complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred,[24] and in this case, the record does not contain a final EEO Commission decision.

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

[21] *Dennis J. Balogh, supra* note 4.

[22] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[23] *Joe M. Hagewood, supra* note 20.

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

Finally, in regard to appellant's contention that management actions constituted a pattern of harassment, to constitute harassment under the Act, there must be evidence of a persistent disturbance, torment or persecution.[25] Appellant submitted no corroborating evidence to substantiate that he was in fact harassed, and employing establishment management provided a number of statements countering his allegations. Hence, the Board finds that his allegations do not establish harassment but constitute his perception that he was harassed. As appellant did not establish as factual a basis for his perceptions of discrimination or harassment by the employing establishment, he did not establish that harassment and/or discrimination occurred.[26] The evidence instead suggests that the employee's feelings were self-generated and thus not compensable under the Act.[27]

Nonetheless, as appellant established a compensable factor of employment, that he was called to a meeting in February 2008 regarding the performance of an employee he supervised, 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.[28] 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.

[25] *Beverly R. Jones*, *supra* note 16.

[26] *Id*.

[27] *See Gregorio E. Conde*, 52 ECAB 410 (2001).

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

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2009 and May 19, 2008 decisions of the Office of Workers' Compensation Programs be set aside and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: April 26, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board