

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

W.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Warner Robins, GA, Employer**

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**Docket No. 09-1965
Issued: April 8, 2010**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 27, 2009 appellant filed a timely appeal of the July 13, 2009 merit decision of the Office of Workers' Compensation Programs, which denied his claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On March 19, 2009 appellant, a 56-year-old postmaster, filed an occupational disease claim for stress-related hypertension. He identified November 10, 2008 as the date he first realized his condition was employment related. Appellant alleged an ongoing attack by his immediate supervisor, Martin E. Thompson. He claimed that Mr. Thompson failed to give him sufficient opportunity to be successful. Appellant also alleged that Mr. Thompson sabotaged his

attempts to meet his goals. He stated that Mr. Thompson would not assist in staffing, mail concerns and flows or acquiring efficient vehicles. Appellant stopped work on November 13, 2008 and returned to work on March 16, 2009.¹

In a statement dated March 20, 2009, appellant alleged that Mr. Thompson had verbally berated him since April 2007 on almost a daily basis. He reiterated that Mr. Thompson sabotaged his efforts to complete his goals and that he had been targeted for failure. Mr. Thompson reportedly ignored appellant's many requests for assistance. Appellant stated that the abuse was solely directed towards him and was responsible for his dangerously elevated blood pressure (hypertension). He also alleged that Mr. Thompson had written very negative and untrue statements in his fiscal year 2008 performance appraisal.

Appellant submitted treatment notes from Dr. Aris D. Sahagian, a Board-certified internist. In records dated November 17, 2008 through February 26, 2009, Dr. Sahagian noted that he initially evaluated appellant on November 17, 2008 for complaints of ongoing stress at work over the past several months and trouble dealing with stressful demands. Appellant complained of trouble sleeping and a decreased ability to concentrate. Dr. Sahagian diagnosed adjustment reaction to employment stressors with insomnia and dysphoria, hypertension -- secondary to adjustment disorder and hypercholesterolemia. At that time, he excused appellant from work through January 1, 2009. Appellant saw Dr. Sahagian on four subsequent occasions. Dr. Sahagian's diagnoses remained unchanged, with the exception of a February 12, 2009 additional diagnosis of cervical disc disease with left upper extremity radiculopathy. He ultimately extended appellant's work absence through March 15, 2009.

On April 3, 2009 the Office requested additional information about the employment incidents that allegedly caused or contributed to appellant's claimed condition. It explained that the information provided on Form CA-2 was not sufficiently detailed. Appellant was also asked to provide a comprehensive medical report from his treating physician.

In an April 13, 2009 response, appellant stated that he had been removed from his position as postmaster, effective November 13, 2008, and had spent the next four months getting healthy so as to resume work. When he returned to work in March 2009, Mr. Thompson reportedly advised appellant that he could not have any contact with anyone from his office. Appellant explained that, because he had been pulled from his office, he could not access his files or obtain statements from employees to substantiate his claim. He stated that he was currently on a detail and his ability to provide the requested documentation rested with Mr. Thompson. Appellant contended that Mr. Thompson unfairly pulled him out of his office in November 2008. He also provided a copy of his fiscal year 2008 performance appraisal, which he alleged was full of lies and was based on Mr. Thompson's dislike of him. Appellant claimed that the rating Mr. Thompson prepared ignored the positive half year he had in 2008. Mr. Thompson allegedly found every negative thing and also made up more negative claims. Appellant stated that he provided Mr. Thompson another factual report on his half year in the office, but he would not meet with appellant at the end of the year and later pulled him out of the

¹ Appellant appears to have been relieved of his postmaster duties upon returning to work on March 16, 2009. According to the claim form (Form CA-2), he was "currently performing 1838c's and street supervision."

office. In his November 4, 2008 performance appraisal, he received an overall score of 4 (contributor) on a scale of 1 to 15.²

In a May 29, 2009 statement, Mr. Thompson, manager, post office operations, advised that appellant was 1 of 12 postmasters that reported to him. He explained that his responsibility was to manage, through subordinate postmasters, the operations of a group of post offices. Mr. Thompson stated that he had frequent telecommunication with the entire group. He also communicated with all postmasters as a group by e-mail and with individual postmasters by e-mail, telephone or office visits. Mr. Thompson stated that his conversations always concerned operational issues and that his group of 12 postmasters all had the same goals and were accountable for what happened at their respective post offices. Additionally, Mr. Thompson advised that appellant had not received any more attention than the other postmasters under his supervision. All communications with appellant concerned operational issues at his office and the duties of his position. Mr. Thompson stated that appellant's 2008 performance evaluation reflected his accomplishments during the year and was based on data from his office.

By decision dated July 13, 2009, the Office denied appellant's claim, finding that he did not establish any compensable employment factors. It noted that appellant had not submitted any evidence to support his allegations of verbal abuse or administrative error. The Office noted that performance appraisals were administrative functions and appellant had not shown Mr. Thompson either erred or abused its discretion.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. 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.⁴ Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁵ Perceptions and feelings alone are not

² The rating scale is as follows: 1-2 (noncontributor); 4-9 (contributor); 10-12 (high contributor); and 13-15 (exceptional contributor).

³ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁴ *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

⁵ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁶ 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.⁷

ANALYSIS

Appellant alleged that Mr. Thompson sabotaged his work, targeted him for failure and verbally berated him almost daily. However, none of these allegations are supported by evidence in the record. Appellant blamed his inability to substantiate his claim on Mr. Thompson for essentially assigning him new duties and restricting his access to his former post office. Appellant also alleged abuse in the annual performance appraisal he received from Mr. Thompson in November 2008.

With respect to appellant being pulled from his former post office and placed on a detail, this constitutes an assignment of work and is administrative in nature. Work assignments are administrative in nature and, absent evidence of error or abuse, such matters are noncompensable.⁸ Appellant has not established error or abuse on the part of the employing establishment in reassigning his duties. An employee's dissatisfaction with being transferred constitutes frustration from not being permitted to work in a particular environment or to hold a particular position, and is not compensable.⁹ Appellant also alleged abuse in the 2008 end-of-the-year rating he received from Mr. Thompson. Performance ratings are also administrative matters and, therefore, are not compensable, absent a showing of error or abuse on the part of the employing establishment.¹⁰ Appellant has not demonstrated error or abuse in this instance. Because he failed to establish a compensable factor of employment, the Board need not review the medical evidence of record. The Office properly denied his claim.

CONCLUSION

Appellant has not established that he sustained an emotional condition in the performance of duty.

⁶ *Kathleen D. Walker*, *supra* note 3.

⁷ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of the Federal Employees' Compensation Act. *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001). However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor. *Id. Jeral R. Gray*, 57 ECAB 611, 616 (2006).

⁹ *Robert Breeden*, 57 ECAB 622, 628 (2006).

¹⁰ *David C. Lindsey, Jr.*, 56 ECAB 263, 271-72 (2005).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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