United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 09-1679**
	)	**Issued: July 19, 2010**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 12, 2009 appellant filed a timely appeal from the May 20, 2009 merit decision of the Office of Workers' Compensation Programs, which denied his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[1]

ISSUE

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

[1] For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

On May 12, 2008 appellant, then a 38-year-old letter carrier, filed an occupational disease claim, alleging an emotional condition as a result of his federal employment. He became aware of his condition and realized that it was related to his work on June 6, 2008. Appellant stopped work on March 25, 2008.

On November 14, 2007 appellant underwent a psychiatric evaluation with Dr. Jay L. Liss, a Board-certified psychiatrist, who noted that appellant served with the Marines from 1988 to 1997 and reported witnessing and being confronted with events that involved actual or threatened death or serious injury. He also felt harassed by his employer. Dr. Liss diagnosed post-traumatic stress disorder from combat experience in Kuwait with the marines, attention deficit disorder and major stress as it related to work at the employing establishment, which was a complication of post-traumatic stress disorder.

On July 10, 2008 the employing establishment controverted the claim. It noted that appellant failed to submit a description of any particular employment factors which caused his condition and provided no dates, periods, events or people involved. The employer further noted that appellant failed to submit a medical opinion which addressed how any factors of his employment caused or aggravated his condition.

On July 29, 2008 the Office asked appellant to submit additional evidence, including a detailed description of the employment factors or incidents that he believed contributed to his claimed illness. Appellant submitted a July 25, 2004 medical form from a physician's assistant who diagnosed chronic low back pain, muscle or skeletal etiology, rule out fibromyalgia.

A January 30, 2008 letter from appellant to Tahata Brooks, a supervisor, disputed that he used unauthorized overtime or failed to follow instructions. He asserted that a January 10, 2008 notice of suspension raised an issue which was settled in 2006 for unwarranted discipline and requested that the notice of suspension be purged from his record. Appellant requested an audit to evaluate waste and abuse as a result of Ms. Brook's supervisory style. In a February 26, 2008 letter to the employing establishment, he asserted that Ms. Brooks discriminated against him and displayed a pattern of unfairness, unsafe supervision and unfair labor practices that was dangerous to employees. In an April 2, 2008 letter to Ms. Brooks and Earnestine Flanigan, appellant requested that the supervisors refrain from any activity that violated his civil rights. A May 1, 2008 letter to Steve Seagraves, appellant's manager, advised that he was on leave under the Family Medical Leave Act (FMLA). Appellant asserted that his managers could not discipline employees while on leave under FMLA. He stated that he was only required to present additional documentation to support his absence when he returned to regular duty. In a May 11, 2008 letter to William Mossman, appellant's supervisor, appellant advised that his FMLA leave might exceed the 12-week limit and his sick leave would be depleted in two pay periods. On August 20, 2008 he contended that his stress was work related.

The record contains a letter of warning dated April 26, 2006, in which appellant was cited for failure to safely operate his vehicle. It noted that on March 11, 2006 he was involved in a preventable motor vehicle accident. Upon investigation, the employer determined that appellant was at fault in the accident. In an April 28, 2008 letter, Mr. Seagraves advised appellant that he

had been absent from duty since March 17, 2008 and had not submitted required documentation to support his absence and had seven days to submit additional documentation or he would be charged as absent without leave.

In a September 17, 2008 decision, the Office denied appellant's claim finding that he did not establish a work-related condition. It found that the claimed emotional condition did not arise in the performance of duty. As appellant failed to establish any compensable employment factor.

On September 24, 2008 appellant requested a telephonic hearing that was held on March 12, 2009. In a September 24, 2008 statement, he asserted that the September 17, 2008 decision was arbitrary. Appellant contended that his medical conditions were work related and that he had been unable to secure and maintain gainful work. In a November 12, 2008 affidavit, he reiterated that his medical conditions were employment related. Appellant further sought a copy of all adjudicatory materials. In a March 2, 2009 affidavit, he noted that he was *pro se* and that his union had abandoned him. Appellant contended that the employing establishment did not oppose his claim and that he proffered evidence that his medical conditions were work related and that he was unable to work due to his conditions.

In a May 20, 2009 decision, an Office hearing representative affirmed the September 17, 2008 decision.

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 psychiatric 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 emotional condition.[2]

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*,[3] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[4] 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 under the Act.[5] When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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

[2] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] 28 ECAB 125 (1976).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[6] 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 under the Act. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.[7]

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. Administrative or personnel matters are generally unrelated to an employee's regular or specially assigned work duties and do not fall within coverage of the Act absent evidence showing error or abuse on the part of the employing establishment.[8] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[9]

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.[10] 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 the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[11]

[6] *Supra* note 3.

[7] *Id*.

[8] *C.T.*, 60 ECAB ___ (Docket No. 08-2160, issued May 7, 2009); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[9] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

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

[11] *Id.*

ANALYSIS

In this case, appellant has not alleged that his emotional condition and disability was the result of his regular or specially assigned duties or a requirement imposed by the employing establishment. He has not alleged or established an employment factor under *Cutler*.[12]

Appellant attributed his emotional condition to administrative or personnel actions of the employing establishment.

Appellant alleged that his supervisor, Ms. Brooks, improperly disciplined him for unauthorized overtime and failure to follow instructions. Allegations regarding disciplinary actions relate to administrative or personnel matters and are unrelated to appellant's regular or specially assigned work duties.[13] Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.[14] The Board notes that appellant submitted no evidence to support his allegation. The only disciplinary information of record is a letter of warning dated April 26, 2006. Appellant was cited for failure to safely operate his motor vehicle on March 11, 2006 when he was involved in a preventable accident. The employer noted that after an investigation it was determined that appellant was at fault for the accident and that it was preventable. The evidence reflects that the employer acted reasonably in response to appellant's automobile accident. Appellant failed to submit sufficient evidence to support that the employing establishment acted unreasonably in this matter. This matter does not rise to the level of a compensable employment factor.

Appellant alleged that Ms. Brooks displayed a pattern of unsafe supervision and unfair labor practices and that Ms. Brooks and Ms. Flanigan violated his rights under various statutes and employing establishment policy. The Board notes that the assignment of work is an administrative function.[15] The manner in which a supervisor exercises this discretion generally falls outside the ambit of the Act. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or of a managerial action will not be compensable, absent evidence of error or abuse.[16] Although appellant asserted that his supervisors violated various laws or policies in supervising him, he did not submit evidence corroborating that the supervisors acted unreasonably in any action of assigning work. The Board finds that he has not offered sufficient evidence to establish error or abuse regarding his work assignments. The evidence does not establish that the employing establishment acted unreasonably.

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[12] *Supra* note 3.

[13] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[14] *Id.*

[15] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[16] *C.S.*, 58 ECAB 137 (2006)

Appellant's alleged that Ms. Brooks and Mr. Seagraves violated the FMLA leave and overtime authorization. The Board notes that, while the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[17] The record reveals that on April 28, 2008 Mr. Seagraves advised appellant that he had been absent from duty since March 17, 2008 and had not submitted sufficient documentation to support his absence. Appellant was advised to submit the required materials within seven days or his absence would be charged as absent without leave. He presented no evidence that the employer erred in the FMLA matter. Appellant also presented no statement identifying the specifics of his contentions regarding authorization of overtime or evidence supporting that his managers erred in this administrative matter. The Board finds that there is no evidence that employing establishment personnel acted unreasonably in these administrative matters. Rather, the evidence regarding these leave matters supports that the employing establishment advised appellant of the proper documentation needed for requesting leave and allowed him an opportunity to provide such material. The request for the submission of additional documents to support his absence from work does not rise to the level of a compensable employment factor.

Appellant also alleged that the local union abandoned him at the onset of his claim and that he was not represented while pursuing his claim for compensation. The Board notes that the development of any condition related to such matters does not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially-assigned duties.[18] Therefore, the Board finds that appellant failed to establish a compensable factor pertaining to his allegation that he had no assistance in handling his compensation claim.

Consequently, appellant has not established his claim for an emotional condition as he has not established any compensable employment factors.[19]

On appeal appellant reiterated that his mental condition is due to his federal employment. As noted, he has the burden of proof to establish his claim for an emotional condition. Neither the Office nor the employer have the burden to disprove his claim. The Office properly advised him of the evidence needed to establish his claim but the evidence submitted is not sufficient to establish administrative error or abuse

CONCLUSION

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

[17] *See Judy Kahn*, 53 ECAB 321 (2002).

[18] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[19] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2009 and September 17, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 16, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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