United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 09-1677**
	)	**Issued: June 1, 2010**
U.S. POSTAL SERVICE, THORNTON BRANCH, Denver, CO, Employer	)	

Appearances:
Gregory A. Hall, Esq., for the appellant
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 a December 16, 2008 decision of the Office of Workers' Compensation Programs 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 appellant through his attorney asserts that he sustained an emotional condition due to overwork and his regularly assigned duties and that the Office did not make a proper determination.

FACTUAL HISTORY

On September 6, 2006 appellant, then a 59-year-old supervisor, filed a Form CA-2, occupational disease claim, alleging that factors of his employment caused stress. He stopped work on August 25, 2006.

By letter dated September 15, 2006, the Office informed appellant of the evidence needed to support his claim. Appellant submitted a statement with attachments in which he alleged daily frustration due to factors of his employment. He alleged that on August 25, 2006 he was given a letter of expectations and instructions by Shelby Broadway, manager of customer services, following which he went to the emergency room. Appellant alleged a confrontation with a union steward on July 16, 2005 and sought medical attention. He alleged that he had eight managers in three years; a lack of support, cooperation and appreciation from management; an extremely hostile union with excessive grievances filed against him and an extremely aggressive carrier Virginia Venden. Appellant stated that deadlines and time frames were stressful, including the "every piece every day" policy, and that he was held accountable for things out of his control. During the past three years he had worked six days a week and worked on his day off. Appellant noted that he had a previous history of post-traumatic stress disorder (PTSD) and anxiety disorder due to being physically and mentally abused by his father and sexually abused by a cousin. He alleged that he had to perform extra work to get the mail out because he did not have enough carriers. Appellant submitted the August 25, 2006 letter of expectations and instructions that included a list of appellant's duties and responsibilities, and a rebuttal in which he disagreed with some of the instructions. He attempted to get an intervention regarding the disruptive behavior of Ms. Venden, that it was impossible to perform all the duties outlined in a day, especially if he was to start at 6:30 a.m. rather than 5:30 a.m. as he had been working and that the workload was unfairly distributed. Appellant acknowledged that he was guilty of cursing in the workplace when there was an important message, and enumerated problems with Ms. Venden who, he alleged, had filed numerous grievances and Equal Employment Opportunity (EEO) claims, and Robert Mesa, a union steward. He further alleged there was a disparity in management's treatment of him and the other supervisor, Bill Patterson.

Appellant stated that, in the meeting with his supervisor, he felt the stress building and when the meeting ended, told her that he could no longer take the stress and was taking medical leave. He submitted a timeline, stating that Ms. Broadway began working at the employing establishment on August 7, 2006, that she confronted him on August 10, 2006, he had a vertigo attack on August 11, 2006, was given the letter on August 25, 2006 and then saw multiple medical professionals. On September 22, 2006 appellant requested and was granted leave under the Family and Medical Leave Act (FMLA).

In emergency room reports dated July 16, 2005, Dr. Janet M. Sweetman, Board-certified in emergency medicine, noted appellant's complaints of headache and chest pain. She diagnosed atypical chest pain, suspect anxiety. An electrocardiogram (EKG) and chest x-ray were normal. In an August 25, 2006 emergency room report, Dr. David Hugh Kruger, an osteopath, diagnosed headache and chest pain. EKG and chest x-ray were normal. A computerized tomography (CT) scan of the head demonstrated no acute abnormality and mild bilateral maxillary and ethmoid sinus disease. In an August 28, 2006 report, Dr. Stanton R. Elzi, a Board-certified internist, noted appellant's complaint of extreme stress at work leading to vertigo, headache and chest pain. He provided findings on physical examination and diagnosed acute situational stress, essential hypertension and vertigo. Thomas C. Munnell, Ph.D., a clinical psychologist, provided a duty status report dated August 31, 2006. He described hypervigilance and physical and emotional over activity and diagnosed stress. Dr. Munnell advised that appellant could not work. In a September 22, 2006 report, he advised that appellant had been seen five times since August 31, 2006 reporting stress from his work environment with symptoms of anxiety, mild depression, acute stress disorder and PTSD. Dr. Munnell stated that it was "most likely" that

appellant's employment contributed to his condition, stating that "going from being seen as a star performer to being handed a list of 23 things to change is not easy for anyone to assimilate." On September 28, 2006 he again advised that appellant could not work.

The employing establishment controverted the claim and in February 2, 2007 letters, countered each of appellant's allegations, stating that appellant wanted to do things the way he always had and not implement recommended changes, noting that he would disappear for long periods of time. The employing establishment advised that he was provided the resources necessary to accomplish his duties and was not instructed to work six days a week or to take work home, and that the August 25, 2006 letter presented to him by Ms. Broadway was not a disciplinary letter but was informational and instructional. The employing establishment submitted a chart of the hours appellant worked each week from pay period 19 in 2003 through pay period 18 in 2006, an October 27, 2005 letter of warning for failure to follow instructions, letters of instructions dated March 6 and November 3, 2005 and March 30, 2006, a notice changing appellant's reporting time, and a memorandum outlining the fiscal year 2006 expectations of the delivery superintendent.

In a September 26, 2006 statement, Anita Summerfield, manager, customer services, advised that on August 25, 2006 appellant had a meeting with Ms. Broadway to discuss his work deficiencies and conduct. She noted that she met with appellant on September 8, 2006 and gave him a CA-2 claim form, advised that he was abrupt and used profanity on the workroom floor, and stated that he was not required to work overtime and that there were no shortages that would be detrimental to completing assignments. In a January 12, 2007 statement, Valorie Jordan, a former safety specialist, noted that appellant became argumentative during a safety meeting in June 2006. In a February 1, 2007 statement, Stacie Johnson, former branch manager, discussed problems with the carriers and the union and confirmed that Ms. Venden had filed an EEO complaint and other claims, that human resources denied appellant's request for an intervention, and that appellant had moved to another branch. In a number of statements, Ms. Broadway noted that she was temporary manager and it was her responsibility to address appellant's performance. She disputed his allegations regarding their meeting on August 25, 2006, noting that in many instances appellant failed to follow instructions, procedures and policy and that he would perform craft duties when craft employees were available. Ms. Broadway stated that appellant conducted investigative interviews with employees and that he had sufficient time to complete his assigned duties, noting that he would disappear from the workroom floor without informing anyone and took numerous smoking breaks, and that, while she was on the detail, she was informed that he was rude, discourteous and inappropriate during a district meeting, that he used profanity when speaking to her, and that, during her detail, she had several conversations with appellant about his failure to follow instructions and proper procedures and his failure to complete assigned tasks.

By decision dated May 7, 2007, the Office denied appellant's claim, finding that, as he failed to establish a compensable factor of employment, he did not establish that he sustained an emotional condition in the performance of duty. On June 5, 2007 appellant, through his attorney, requested a hearing. He requested that Ms. Johnson be subpoenaed, and attached a declaration advising that she had been his manager for approximately three years and could attest to an overburdened workload. By decision dated August 13, 2007, an Office hearing representative remanded the case to the Office. He found that the majority of appellant's contentions were not

compensable but the fact that he had to deal with a contentious employee Ms. Venden needed further development.

By letter dated August 16, 2007, the Office asked that the employing establishment to comment on appellant's allegations regarding Ms. Venden. In an August 24, 2007 letter, counsel argued that the August 13, 2007 decision made little mention of the overburdened workload issue and it was unclear if the decision was adverse to appellant as it did not include appeal rights. He argued that the Office had the duty to develop the overwork issue and provide appellant with appropriate appeal rights. In an undated statement, Ms. Johnson advised that because appellant was Ms. Venden's supervisor, the very nature of the position required instructive and disciplinary interaction with her. She noted that Ms. Venden disagreed with some of appellant's actions and filed grievances and EEO complaints but did not believe Ms. Venden was guilty of harassing appellant. The employing establishment further stated that because Ms. Venden had an ongoing EEO complaint claim filed against appellant, the employing establishment could not request that she respond to the Office's questions. By letter dated September 28, 2007, the Office asked that the employing establishment respond to appellant's allegation that there was an increased workload placed on him by the "every piece every day" policy, stating that he alleged this resulted in extra duties, and to respond to his allegation that he had an overburdened workload because insufficient resources were allocated to compensate for staff shortages, that he had a overburdened workload because he had to respond to grievances filed by Ms. Venden, and that his workload was heavier than other supervisors. In an undated statement, Ms. Johnson advised that appellant spoke to her about a heavy workload and asked that some tasks be transferred to the afternoon supervisor to reduce his workload but noted that he rarely worked more than eight hours per day. She stated that, with the impact of computers, some of the duties had changed but the length of time needed to fulfill the duties had not increased, and noted that appellant performed nonsupervisory duties because he wanted to, not because he was instructed to and that she had counseled him on time management skills. In an October 29, 2007 letter, the employing establishment responded, stating that the "every piece every day" policy was not a new policy, but had always been the goal of the employing establishment and that there was no factual basis to substantiate his allegation of a burdensome workload because the branch was adequately staffed and appellant chose to ignore resources available to him.

By decision dated November 29, 2007, the Office found that appellant had not established a compensable factor of employment and denied his claim on the grounds that he did not sustain an injury in the performance of duty. On December 18, 2007 appellant, through his attorney, requested a hearing, and submitted another subpoena request for Ms. Johnson and a declaration dated September 22, 2007 in which appellant asserted that her testimony was necessary because she was aware of the overburdened workload at the employing establishment. On March 21, 2008 the Office denied appellant's request for a subpoena, finding that he could obtain the information by other means.

At the hearing, held on March 28, 2008, Robin Winters, who worked with appellant as a floating supervisor in 2005 and 2006, testified that appellant always worked on his day off and more than eight hours daily. She described supervisory duties and stated that she observed appellant help carriers and had never seen anyone work as hard as appellant. Appellant testified that he worked his day off and approximately 10 hours each day but was not paid for overtime. He stated that, due to changes in policy, more duties were placed upon supervisors, specifically

mentioning timekeeping duties, and that, when Ms. Venden was a union steward, she filed many grievances. Appellant noted that Ms. Broadway had only been at the employing establishment three weeks when, on August 25, 2006, she gave him the letter of instruction that listed 23 items he was doing wrong. He stated that this made him feel worthless, that he became physically ill and had to go to the emergency room and was off work for two months, taking FMLA leave. Appellant submitted an e-mail dated May 1, 2006 in which Ms. Johnson stated that two union stewards had been targeting appellant for two years.

The employing establishment submitted appellant's earnings and leave statements for the years 2004 and 2005 and for pay periods 1 through 18 in 2006, provided a summary chart for the period from pay period 19 in 2003 through pay period 18 in 2006 showing that appellant routinely worked more than 40 hours a week, a chart explaining the payroll codes, and appellant's Form 50 history from December 12, 1996 to September 12, 1998. In a number of statements, the employing establishment disputed many of the allegations made by appellant and Ms. Winters at the hearing. Ms. Summerville stated that she worked with appellant for 10 days and that the supervisor's job was fast-paced and required prioritizing and time management skills. She stated that the "every piece every day" policy had been in place for some time and disputed that appellant needed 50 to 60 hours a week to get his work done. Ms. Johnson advised that appellant was never instructed to sort mail and did so of his own accord. She discussed the responsibilities of the delivery supervisor and stated that appellant often had carrier replacement assistance from another branch and if appellant worked on his day off, he was paid for his time. Ms. Johnson opined that he did not practice good time management and acknowledged that the union had filed many grievances against appellant. Ms. Broadway advised that Ms. Winters did not work at the branch during her detail there and described the duties of the delivery supervisor, noting that appellant refused to follow instructions. She noted that appellant worked his day off on one occasion during her detail and was paid, that staffing was adequate, and that, because appellant chose to do clerk work, grievances were filed.

By decision dated December 16, 2008, an Office hearing representative affirmed the November 29, 2007 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 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.[1] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[2] 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.[3]

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

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

[3] *Id.*

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*,[4] 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.[5] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[6] 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.[7] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[9] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[10]

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.[11] Where 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.[12]

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.[13] 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 complaint, 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,

[4] 28 ECAB 125 (1976).

[5] 5 U.S.C. §§ 8101-8193.

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

[7] *Lillian Cutler*, *supra* note 4.

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

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

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

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

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

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

the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[14]

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.[15] Appellant alleged that his claimed condition arose, in part, because he had to handle EEO claims and grievances and union stewards regarding carrier complaints. The Board finds that the evidence of record is sufficient to establish that Ms. Venden and others filed the claims and that appellant had to conduct investigative interviews. Appellant was in the performance of his regular managerial duties while attending to these duties and they are compensable factors under *Cutler*.[16] He further alleged that he was overworked, specifically stating that he could not complete his assigned duties in a regular eight-hour day. The Board has held that overwork, when substantiated by sufficient factual information to corroborate the claimant's account of events, may be a compensable factor of employment.[17] While the record contains appellant's earnings and leave statements that support appellant's contentions that he routinely worked more than 40 hours a week, the employing establishment submitted a number of statements disagreeing with appellant's contention that he had an overburdened workload. The Board finds that the evidence while supportive, is nonetheless controverted and is insufficient to establish overwork, as a compensable factor. The employing establishment disputed that appellant's long hours were due to his job; rather it involved appellant's doing the craft position duties himself. Thus, this factor has not been established.

The claimed event on July 16, 2005 is not described with enough specificity for the Board find that it is compensable. Appellant merely stated that he had a confrontation with a union steward but there are no statements by any witnesses to the claimed event. Regarding his contention that he was harassed at the meeting with Ms. Broadway on August 25, 2006 and inappropriately given a letter of expectations and instructions, 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.[18] Ms. Broadway explained that appellant was not following established policies and procedures and that the letter was informational and instructional. Other than to disagree with policies and procedures, appellant did not submit sufficient evidence to establish that Ms. Broadway acted in

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

[15] *Penelope C. Owens*, 54 ECAB 684 (2003); *see Lillian Cutler*, *supra* note 4.

[16] *Lillian Cutler*, *supra* note 4.

[17] *Bobbie D. Daly*, 53 ECAB 691 (2002).

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

an inappropriate manner. Appellant's reaction to the meeting and the letter given him must be considered self-generated and do not constitute compensable factors of employment.[19]

The majority of appellant's additional contentions involve his disagreement with policies and procedures at the employing establishment in that he asserted he was not provided intervention, disagreed with his assigned start time, policies regarding carrier schedules and duties, the distribution of work, and the procedures to be followed in processing and delivering mail, including the "every piece every day" policy. An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation.[20] Where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[21] Perceptions of unfair treatment are not enough to establish error or abuse. A claimant must submit real proof that management did in fact commit error or abuse[22] and frustration with the policies and procedures of the employing establishment are administrative matters and are not compensable factors of employment.[23] Appellant did not substantiate any employing establishment error with respect to its established policies and procedures. In numerous statements, various managers refuted his allegations and provided reasonable explanations for the actions taken. Appellant therefore failed to show error or abuse regarding the policies and procedures of the employing establishment and did not establish these claimed factors as compensable.

Finally, in regard to appellant's contention that actions by management and the union, especially Ms. Venden, constituted a pattern of harassment, to constitute harassment under the act, there must be evidence of a persistent disturbance, torment or persecution.[24] Other than the May 1, 2006 e-mail in which Ms. Johnson stated that two union stewards had been targeting appellant for two years, he submitted insufficient evidence to substantiate that he was in fact harassed. The Board finds this brief e-mail is not adequate to support harassment. As noted, managers provided statements countering his allegations and explaining the basis for the actions taken. Appellant did not establish as factual a basis for his perceptions of discrimination or harassment. The evidence suggests that his feelings were self-generated and are not compensable under the Act.[25]

As appellant established compensable factors of employment under *Cutler*, the Office must base its decision on an analysis of the medical evidence. The case will therefore be remanded to the Office for this purpose.[26] After such further development as deemed necessary, the Office shall issue an appropriate decision on the merits of this claim.

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[19] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

[20] *L.S.*, 58 ECAB 249 (2006).

[21] *J.C.*, 58 ECAB 594 (2007).

[22] *L.S., supra* note 20.

[23] *See William Karl Hansen*, 49 ECAB 140 (1997).

[24] *Beverly R. Jones*, *supra* note 14.

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

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

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2008 decision 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: June 1, 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