United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 10-433**
	)	**Issued: November 1, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Mayaqüez, PR, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2009 appellant filed a timely appeal from the October 16, 2009 merit decision of the Office of Workers' Compensation Program. 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 established an injury in the performance of duty.

FACTUAL HISTORY

On January 5, 2009 appellant, a 62-year-old letter carrier, filed a traumatic injury claim (Form CA-1) in which he alleges that on December 5, 2008 he sustained a left leg and arm condition following a stroke.[1] He noted that, on the day in question, he told his supervisor that he was not "feeling … too well" and that he would prefer not to work but would rather see a doctor. Appellant stated that his supervisor was not able to release him from work. He alleged experiencing spasms on the left side of his face, weakness in his left leg and arm, difficulty

[1] Appellant originally filed this claim as a traumatic injury (Form CA-1). The Office converted appellant's claim to an occupational disease claim (Form CA-2).

walking, his "teeth and eye hurt," and felt "more nervous." Appellant's supervisor noted on the claim form that appellant "suffered [a] minor stroke" and checked the box indicating that this injury did not occur in the performance of duty.

Appellant submitted several medical reports predating the injury by a period of years, as well as results from diagnostic tests, an unsigned hospital report and a disability determination report bearing an illegible signature.

On December 5, 2008 Dr. Ana H. Vidal-Cardon, a neurologist, noted that a computerized tomography (CT) scan of appellant's brain had been performed. She diagnosed left frontal cortical changes and a left pontine hypodensity, that "… may represent [a] small infarct[ion]."

Appellant submitted a report, dated December 8, 2008, in which Dr. Rosa E. Ramos-Martinez, a radiologist, reported that a carotid endarterectomy scan revealed no evidence of stenosis. In a separate report, also dated December 8, 2008, Dr. Mayara M. Colon-Candelaria, a Board-certified internist, presented findings on examination.

Appellant also submitted reports signed by a registered nurse, a nurse practitioner and an occupational therapist.

In a January 7, 2009 statement, appellant's supervisor stated that five minutes after appellant came to work on December 5, 2008 he told the supervisor that he was not feeling well and asked if someone else could take his route. He stated that he understood what appellant asked him and told him that he would "see" how to replace him and told him to continue casing mail. During the next hour and a half appellant's supervisor asked him three times how he felt, and he responded that he did not feel good, but that he was going to take the route to the street. He also noted that he told appellant that if he felt ill out on the street he should call him.

In a supplemental statement, dated February 3, 2009, appellant described his employment duties, work environment and medical history. He stated that his medical condition was the direct result of the dispute he had with his supervisor concerning his "need to take the rest of the day off to seek medical assistance." Appellant also attributed his condition to the "additional physical efforts, loading up the truck, driving and delivering part of the route." He noted that he never stated that he could continue working that day but was forced to do so. Appellant alleged asking his supervisor to release him from work on several occasions and that each request was denied because his supervisor did not have anyone to replace him. He stated that he told his supervisor he was afraid of going out on the street in his condition because he feared falling or that he would have an accident, to which his supervisor allegedly responded, "don't worry you won't fall." Appellant alleged that, on December 5, 2008, while delivering mail to the second floor of a medical building, he momentarily lost his balance. After regaining his balance, he stated that his teeth hurt and the left side of his face felt numb, "Like a spasm."

Appellant stated that the employing establishment was considering implementing a series of changes that would affect his employment duties. He noted that of these changes, the "Window of Operation" affected him the most in that it "complicated already deteriorating conditions." Appellant also alleged his employment duties and uncertainty about the future caused him stress and that he was under pressure due to his physical limitations and the responsibilities of his duty assignment and the restrictions imposed by management."

Further, appellant alleged that Hector Hermida, a supervisor, yelled at him in front of other carriers and customers and called him a thief. He again claimed that not being able to work and uncertainty about his future was adding to his stress.

Appellant stated that in the weeks prior to December 5, 2008, the employing establishment, noting a decline in the volume of mail, had been evaluating existing routes and considering eliminating certain areas from some routes and adding them to other routes. He stated that this was unfair, especially with his limitations.

Appellant attributed his physical conditions to repetitive tasks he performed while casing and delivering mail. He explained that delivering mail required repetitive hand, shoulder, waist and leg motions. Appellant also attributed his physical conditions to lifting and carrying heavy parcels and bundles.

In a March 19, 2009 report, Dr. C. Perez Cardona, an orthopedic surgeon, presented findings on examination and diagnosed "chronic" right shoulder tendinitis and impingement as well as right carpal tunnel syndrome. He opined that these conditions interfered with appellant's capacity to perform his regular physical work activities.

Appellant submitted a March 24, 2009 note in which Dr. Amarilis Corchado Pérez, a neurologist, reviewed appellant's history of injury and opined that his medical conditions rendered him unable to work.

By letter dated April 2, 2009, the Office contacted the employing establishment seeking additional evidence, including comments from a knowledgeable supervisor. Other than the previously received statement of the supervisor, the employing establishment provided no further information.

By decision dated June 30, 2009, the Office denied the claim because the medical evidence of record did not demonstrate that compensable employment factors caused a medically-diagnosed condition. It found that the dispute between appellant and his supervisor concerned a request for leave and as such was an administrative function of the employer. The fact that appellant felt stress when he was under pressure to do his job and uncertainty about his future were found to be self-generated and not based on work factors. His concern that an employer's evaluation of the routes might result in the elimination of routes was also self-generated and not compensable. As for the allegation of harassment, the Office found insufficient corroborative evidence to support that allegation. Appellant's change in shift was found to be an administrative function and his desire to work a particular shift is not compensable. The Office also found that the allegations about increasing the amount of work on a route were unsubstantiated.

On July 21, 2009 appellant requested reconsideration. He disputed the Office's decision and argued that his claim should not have been converted to an occupational disease claim (Form CA-2) because he would like to have been eligible for continuation of pay.

By decision dated October 16, 2009, the Office denied modification of its June 30, 2009 decision, finding that the evidence of record did not establish that his condition was caused by compensable employment factors.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

To establish that he sustained an emotional condition in the performance of duty, a claimant 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 her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.[8] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[9] 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.[10]

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. 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 of workers' compensation. When the disability results from an emotional

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[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[7] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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

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

[10] *Id.*

reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[11] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[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] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[14] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[15]

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.[16] If a claimant does implicate a factor of employment, it 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.[17]

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an injury as a result of a number of employment incidents and conditions. The Office denied his condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant stated that his medical condition was the direct result of the dispute he had with his supervisor concerning his need to take the rest of the day off on December 5, 2008 to

[11] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[12] *Gregorio E. Conde*, 52 ECA 410 (2001).

[13] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990*); reaff'd on recon*., 42 ECAB 556 (1991).

[14] *See William H. Fortner*, 49 ECAB 324 (1998).

[15] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[16] *Dennis J. Balogh*, *supra* note 8.

[17] *Id*.

seek medical attention because he was feeling ill at the beginning of his shift. He also attributed his condition to a series of possible changes to operations being considered by employing establishment that would require him to perform additional employment duties. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[18] Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[19] However, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[20]

Regarding the allegation that appellant's supervisor erred by not allowing appellant to seek immediate medical attention on December 5, 2008, prior to beginning his route, while in hindsight it is evident that appellant did require medical treatment on the day in question, the Board finds that the evidence does not establish that appellant's supervisor acted unreasonably in allowing him to continue his duties. The evidence of record establishes that appellant did not call in sick on December 5, 2008, but rather came into work and then told his supervisor that he was not feeling well and would "prefer" to see a doctor rather than continue his job duties. He never expressly informed his supervisor that he could not continue his work duties and his supervisor never expressly denied appellant's request to see a doctor. Rather appellant's supervisor attempted to find someone to cover appellant's route, while continuing to ask him how he felt. Given appellant's ambiguous complaints and his willingness to continue his work, his supervisor did not act unreasonably in not sending appellant home to seek medical attention.

Regarding appellant's other allegations that the employing establishment was considering operational changes, he submitted no evidence demonstrating that the employing establishment in fact instituted any changes. Fear of future injury is not compensable.[21] Appellant has not submitted evidence of error in the employing establishment's consideration of operational changes in light of the decreased mail volume at the employing establishment and therefore has not established a compensable employment factor with respect to these administrative matters.

Appellant also attributed his condition to uncertainty about his future. The Board has held that a claimant's job insecurity is not a compensable factor of employment.[22] Accordingly, appellant has not established a compensable employment factor with respect to this allegation.

Appellant attributed his alleged condition to the responsibilities of his duty assignment, including the "additional physical efforts, loading up the truck, driving and delivering part of the route." He claimed that the overall mail volume of the employing establishment had decreased

[18] *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).

[19] *Id.*

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

[21] *I.J.*, 59 ECAB 408 (2008).

[22] *Robert Breeden*, 57 ECAB 622 (2006).

and route inspections/studies were being made to assess the changing dynamics. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.[23] The Board notes that appellant has not, however, established the factual aspects of his claims regarding his work duties. At best, appellant only generally discussed his employment duties and noted that the amount of mail volume at the employing establishment had decreased. He did not establish that his own work duties had increased or that any unfair requirements had been implemented to deal with the overall decreased volume of work at the employing establishment. Such vague, speculative and generalized statements are insufficient to establish a compensable employment factor with respect to appellant's employment duties.

Appellant also alleged that Mr. Hermida yelled at him and called him "a thief." Verbal altercations and difficult relationships with supervisors and coworkers, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will be covered under the Act.[24] A raised voice in the course of a conversation does not, in and of itself, warrant a finding of verbal abuse.[25] Appellant provided no probative evidence supporting this allegation. Therefore, the Board finds that he has not shown how his supervisor's alleged comments or actions rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[26]

As appellant failed to establish any compensable factors of employment, the Office properly denied his claim.[27]

LEGAL PRECEDENT -- ISSUE 2

It is well established that a claim for compensation need not be filed on any particular form. The Board has held that a claim may be made by filing any paper containing words which reasonably may be construed or accepted as a claim.[28]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration and alleged while he had initially filed his claim as a traumatic injury claim on a Form CA-1, the claim should have been filed and analyzed as an occupational injury claim.

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[23] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

[24] *Cyndia R. Harrill*, 55 ECAB 522 (2004); *Beverly R. Jones*, 55 ECAB 411 (2004).

[25] *Karen K. Levene*, 54 ECAB 671 (2003).

[26] *Harriet J. Landry*, 47 ECAB 543, 547 (1996); *see Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

[27] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Hasty P. Foreman*, 54 ECAB 427 (2003).

[28] *Dale M. Newbigging*, 44 ECAB 551 (1993). The Federal (FECA) Procedure Manual Part 2 -- Claims, *Time*, Chapter 2.801.4(a) (March 1993).

The Board finds that the Office properly converted this claim to one for occupational injury as appellant's allegations did not concern one specific incident or event, or a series of events over the course of one workday.[29] The fact finding that the Office made in denying appellant's claim spanned all of appellant's allegations regarding the incidents and factors of his employment. The Office did not solely evaluate appellant's allegations regarding the events of December 5, 2008.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 16 and June 30, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 1, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[29] See the definition of traumatic injury: 20 C.F.R. § 10.5(ee).