

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

T.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lincoln, NE, Employer**

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**Docket No. 10-289
Issued: September 10, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 3, 2009 appellant filed a timely appeal from the November 6, 2008 merit decision of the Office of Workers' Compensation Programs, which denied his stress claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case. The Board also has jurisdiction to review the Office's May 11, 2009 decision affirming the denial of appellant's claim.

ISSUE

The issue is whether appellant sustained a heart fibrillation injury in the performance of duty on August 1, 2008.

FACTUAL HISTORY

On August 2, 2008 appellant, then a 58-year-old mail carrier, filed a claim for workers' compensation benefits alleging that his manager had put him in a very stressful situation that made his heart go into fibrillation. With his medication, this was the first heart fibrillation he had had in a year.

Appellant explained that his union steward came to him on August 1, 2008 and told him that the station manager wanted to see him in his office, ostensibly to talk about a family and medical leave matter, but after closing the door and exchanging pleasantries, “he starts in about me not doing my job and I was the only one on Thursday who didn’t have under time.” “He kept telling me how bad I was doing and he would have to check me on the street again. ... The more he talked and belittled me, the more stressed and threatened I felt and I started shaking all over.” He stated that, when he got up and told the station manager he needed to leave, the manager yelled at him, “no you can’t and sit down.” Appellant stated that he kept going because his heart was fibrillating and he felt like he was going to pass out from the station manager’s threats. He added: “I do my job and wonder why I have to come to work every day and worry about which manager is going to be jumping on me. I felt like Mr. Wampler only wanted to harass me in order to break me down and cause me to stress out.”

Appellant’s union steward stated that, after the meeting started, the station manager asked what he could do to make things better at work. After appellant replied, the station manager told appellant that he was going to have to start following him much more often. The union steward stated:

“This got [appellant] stressing out and he said he was feeling too much and that he needed to leave. He got up to leave and I asked [appellant] to stay in the room. [The station manager] then told [appellant] that he could n[o]t leave. [Appellant] was very agitated and stated that his doctor told him if he’s feeling this much stress that he is to remove himself from the situation. He then left the room.”

On August 1, 2008 the station manager offered his account of what happened.

“Talked to [appellant] on how we can better get along. He stated just leave him alone. I said it is our job to come around every morning and ask for estimate on [r]oute. He said he could not work as fast anymore and was ‘going to throw the anchor out.’ I stated[,] that sounded like a threat to me ‘leave me alone or I will go slower.’ I would be spending more time with him on his route.

“We talked about inspections [and] [appellant] stated he was positive his route would check out long. I stated how can every route in the office give under time except his. He did not know.

“[Appellant] stated he should be treated differently because of his FMLA [Family Medical Leave Act]. I stated we work with his FMLA, but there are several carriers who have FMLA....”

The station manager then gave appellant instructions on no longer using sick leave at the end of the day for under time without medical documentation and not spending 30-plus minutes a day talking to the union people without permission, otherwise he would take corrective action.

The employing establishment controverted appellant’s claim: “[Appellant’s] condition is a self-generated response to policies and reactions to his supervisor’s duties. The claimant has a history of filing a claim whenever he does n[o]t like a postal policy or his supervisor speaks to him. He stated he wants them to leave him alone.”

On August 27, 2008 the postmaster wrote to appellant about the harassment complaint he filed against the station manger following the meeting on August 1, 2008. The postmaster completed an Abusive Workplace Environment Investigation after interviewing appellant, the union steward and the station manager. “The account of this meeting was nearly identical in all three cases,” the postmaster observed. After forwarding all the information to the District Human Resources Manager for review and consultation, the postmaster advised appellant that “we have determined there were no threats made nor could this situation be constituted as an Abusive Work Environment.” The postmaster continued: “There is no doubt that everyone’s perception of events can be different and it is in everyone’s best interest to make every effort to effectively communicate their thoughts and feeling with each other in an effort to see the others perspective.”

On September 2, 2008 appellant advised the Office: “The manager was the one thing that caused my heart to fibrillate. Because of this I feel my claim should be approved.”

In a decision dated November 6, 2008, the Office denied appellant’s claim for compensation benefits. It found that he failed to establish a compensable factor of employment.

On May 11, 2009 an Office hearing representative affirmed the denial of appellant’s claim. He found no evidence that the station manager’s actions during the August 1, 2008 meeting were inappropriate, abusive, unreasonable or harassing.

On appeal, appellant reasserts that the station manager verbally and mentally abused him, and he notes that his union steward was a witness. He also argues that, because the Office approved a coworker’s claim, it could approve his “since it was done by the same supervisors as I have filed on.”

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.¹ When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his 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 true when the employee’s disability resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers’ compensation because they are not found to have arisen out of employment, such as when disability results from 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.²

¹ 5 U.S.C. § 8102(a).

² *Lillian Cutler*, 28 ECAB 125 (1976).

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.³ The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁴ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.⁵ The primary reason for requiring factual evidence from the claimant in support of his allegation of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.⁶

ANALYSIS

In his August 2, 2008 claim for workers' compensation benefits, appellant did not attribute his heart fibrillation to the duties he performed as a mail carrier. He alleged instead that his manager had put him in a very stressful situation on August 1, 2008. As appellant made clear on September 2, 2008: "The manager was the one thing that caused my heart to fibrillate. Because of this I feel my claim should be approved."

The stress appellant felt during his meeting with the station manger is not something that workers' compensation generally covers. Although there is a clear connection to his federal employment -- it happened while he was at work -- it was not an emotional reaction that arose from his assigned duties. It was an emotional reaction to an administrative matter, to a meeting he had with a superior, and as such, appellant has made a claim that generally falls outside the scope of the Act.

There is an exception to the general rule that could provide coverage. If the station manager abused appellant during this meeting, if he committed some administrative error that caused appellant's heart to fibrillate, the Office would recognize a valid basis for the payment of compensation under the Act, but the exception requires more than an allegation of abuse. It requires proof. Appellant's perception that the station manager verbally and mentally abused him might not be the most objective evidence of what actually took place. As the postmaster observed, "There is no doubt that everyone's perception of events can be different."

³ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

⁴ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

⁵ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

⁶ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M., concurring).

In addition to appellant's account of what happened during the August 1, 2008 meeting, the record contains a statement from the station manager. One would expect no admission of abusive conduct by the station manager and no admission is found. The record also contains a statement from appellant's witness, the union steward who attended the meeting, but the steward documented no abuse by the station manager.

So based on the evidence presented, the Board finds that appellant's claim does not fall within the exception that might provide coverage under the Act. Appellant has submitted no proof that the station manager abused him during the August 1, 2008 meeting or otherwise committed a recognized administrative error. The record contains no final decision by the Equal Employment Opportunity Commission, or any other independent evidence, that would support appellant's allegation of administrative error or abuse during the course of this meeting.

That is not to say appellant did not feel stress. There is little reason to doubt that he found the meeting stressful, but that alone is not enough to establish his entitlement to workers' compensation benefits. The Act will not cover an emotional reaction that is self-generated and appellant's perception that his station manager verbally and mentally abused him cannot, by itself, establish the factual basis for his claim. Appellant's burden requires the submission of proof. As the record on appeal contains no such proof, the Board finds that he has not met his burden. The Board will therefore affirm the Office decisions denying appellant's claim for benefits.

Appellant reasserts on appeal that the station manager verbally and mentally abused him, and he notes that his union steward was a witness, but as the Board has just explained, there is no proof, not even from appellant's witness. He argues that the Office has approved the claim of a coworker and that her claim involved the same supervisors. The coworker was not at the meeting that is the subject of appellant's August 2, 2008 claim for benefits. So it seems clear that she based her claim on something else, on circumstances that have nothing to do with whether the station manager abused appellant in the presence of a union steward during a meeting on the morning of August 1, 2008. The coworker's claim is therefore immaterial to the issue decided here.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a heart fibrillation injury in the performance of duty on August 1, 2008. He alleges abuse by the station manager during the meeting that day, but there is no proof to substantiate the charge.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2009 and November 6, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 10, 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