

Service, I became deeply depressed when the Postal Service put me out of work in August of 1995. I was out of work for 3½ months.” He indicated that on August 9, 1995 he first became aware that his illness was caused or aggravated by his federal employment.

In a decision dated November 25, 2009, the Office found that appellant’s claim was timely. It denied the claim, however, on the grounds that he failed to provide any substantive evidence that he suffered an injury or illness that would be compensable.

Appellant requested a telephone hearing before an Office hearing representative. He submitted a more detailed statement implicating his federal employment in 1994. Appellant added that, during a meeting with the postmaster and his current supervisor, the supervisor began taking his rings off his fingers one at a time and leering at him, “which to me was very threatening because I felt that he was going to try to harm me in some sort of way.” He also seemed to implicate his transfer from Dallas to Norman, which he stated his physicians in Dallas did not feel was a good idea. Once transferred to Norman, appellant stated, management continued to disregard his physician’s wishes. Management began to ask if he had ever considered retirement. When appellant answered no, “this appeared to have angered them because this is when the cruel and disparity treatment began.” He stated that the Dallas employing establishment did not want him because he arrived there from New Orleans after Hurricane Katrina and was seen as a burden. Appellant stated that the Norman employing establishment felt the same way: “They both treated me as though I was a second class citizen or a so called Katrina refuge.”

The record shows that appellant was twice placed in an off-duty status without pay on the grounds that the intensity of his anger on July 13, 2009 and February 9, 2010 caused an apprehension of harm and indicated that he might be injurious to himself or others. The record also shows that the Department of Veterans Affairs (VA) increased his disability rating for anxiety and panic disorder with headaches and depression from 30 percent to 70 percent effective August 26, 2009.

Appellant submitted several medical reports supporting that a transfer from Dallas would cause undue stress to him and be harmful to his mental health and that he would benefit tremendously from continuing to work in the same place. Dr. Ira Tunnell, a staff psychiatrist at the Oklahoma City VA Medical Center, explained that appellant worked in New Orleans and Dallas as a clerk and did not have to deal with the public and therefore was able to deal with his post-traumatic stress disorder and anxiety disorder. But when appellant was transferred to Oklahoma in June 2009, his work assignment changed such that he had to assist and work with the public, “which put increased stress on him and exacerbated his anxiety panic attacks.” He was unable to work the job, had to leave and was subsequently hospitalized. Dr. Tunnell explained: “The reason [appellant] was able to work at the other facilities was his being able to work in the back, away from the public and had less stress. The veteran has apparently been a good employee in the past and has liked his work with the [p]ostal [s]ervice and would like to continue but away from the public.”

The employer responded by stating that appellant originally filed a claim on July 7, 1995, which was denied for lack of evidence. The employer stated that he was transferred to Norman on June 6, 2009 with accommodations for his accepted back condition. “[Appellant] does not

have an accepted stress/anxiety claim and when [he] requested accommodations for restrictions due to this illness, he was provided with [l]ight[-d]uty paperwork which he refused to complete.” It was at that time that he filed his emotional condition claim.

Appellant’s current supervisor explained that all he did was fiddle with his rings during the meeting with appellant and the postmaster, “as I do all the time and [the postmaster] will attest to.” Both the current supervisor and the postmaster indicated that they acted reasonably during the meeting.

In a decision dated April 30, 2010, the Office hearing representative found that the evidence did not substantiate that appellant sustained an injury in the performance of duty. He explained that the record did not show that the off-duty placements in 2009 and 2010 were improper. The Office hearing representative noted that both the current supervisor and the postmaster indicated it was appellant who became belligerent and threatening during the meeting. The hearing representative further found that appellant’s transfer from Dallas to Norman was not compensable: there was no evidence that it was improper or that the Norman employing establishment failed to accommodate medical restrictions relating to appellant’s back condition. It was the purpose of the meeting with appellant’s supervisor and postmaster to ensure that appellant applied for light duty pertaining to his anxiety and depression.

The Office hearing representative found no support for appellant’s allegations of harassment and abuse. He explained that appellant’s personal opinion of the work environment was not probative evidence that harassment or abuse actually occurred. The hearing representative also explained that the findings of other administrative agencies, such as the VA’s increased disability rating, were not determinative of entitlement to workers’ compensation. He affirmed the denial of appellant’s emotional condition claim on the grounds that there was insufficient evidence of an injury in the performance of duty.²

LEGAL PRECEDENT

The Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ 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

² The Office hearing representative found that appellant’s allegations concerning his former postal service employment in Louisiana pertained to matters covered in a separate claim, the Office File No. xxxxxx890 and would therefore not be addressed.

³ 5 U.S.C. § 8102(a).

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.⁴

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.⁵ 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.⁶ 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.⁷ 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.⁸

ANALYSIS

The Board is in general agreement with the findings of the Office hearing representative. Appellant's reaction to being transferred from Dallas to Norman is a reaction to an administrative or personnel matter and is therefore not something workers' compensation generally covers. Although several physicians indicated that such a transfer would be harmful to appellant's mental health, it is not clear that the transfer was administratively improper. Neither the Office nor the Board is the proper forum for adjudicating such an issue.

The record shows no administrative error or abuse in the meeting appellant had with his current supervisor and postmaster. Appellant's allegation of threatening behavior by the supervisor is a perception based on the touching of rings and a "leering" look. The supervisor explained that he was simply playing with his rings, as he always does. Without more, this may be a simple matter of misperception, misunderstanding or emotions taking hold. It emphasizes the need for solid, reliable evidence.

There is no evidence to corroborate appellant's allegation that management disregarded his physician's wishes after he transferred to Norman. There is no evidence to corroborate that

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

⁶ 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).

⁷ *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).

⁸ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M., concurring).

management became angry when he advised that he was not considering retirement. There is no evidence to corroborate that management then began the cruel and disparate treatment appellant failed to specify. There is no evidence to corroborate his perception that he was unwanted in Dallas and Norman, that he was treated as a second-class citizen or so-called Katrina refugee. There is no doubt appellant felt that way, but appellant's perceptions alone are not a proper basis for the payment of workers' compensation benefits. He must support his allegations with probative evidence. Appellant must make his case with proof.

The record does not show error or abuse when management twice placed appellant in an off-duty status, first on July 13, 2009 and then on February 9, 2010. The fact that the VA increased his disability rating from 30 to 70 percent for anxiety and panic disorder with headaches and depression is not determinative of his entitlement to disability benefits under workers' compensation. It is well settled that disability under one statute does not prove disability under another.⁹

Compensation may be payable 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. Compensation may be payable 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.

For this reason, the Office hearing representative should have addressed the opinion of Dr. Tunnell, the staff psychiatrist at the Oklahoma City VA Medical Center. Dr. Tunnell offered rationale to support that the nature of appellant's work exacerbated his emotional condition. He explained that appellant was able to deal with his post-traumatic stress disorder in New Orleans and Dallas because appellant worked as a clerk in the back, away from the public and with less stress. But when he was transferred to Oklahoma City (or nearby Norman), his work assignment changed. Appellant now had to assist and work with the public, which put increased stress on him and exacerbated his condition.

If true, Dr. Tunnell has implicated a compensable factor of employment. This is not an allegation based on appellant's perception or his dislike of an administrative or personnel decision. Dr. Tunnell attributed the exacerbation of appellant's diagnosed emotional condition to the stress of carrying out his employment duties. He implicated the very nature of appellant's work.

The Board will therefore set aside the Office hearing representative's decision finding no compensable factor of employment and will remand the case for further development on the narrow question of appellant's duties following his transfer to Oklahoma. The Office should ask the employing establishment to provide a description of the duties he actually performed after the transfer and to address Dr. Tunnell's basic understanding of those duties. If necessary, it should ask Dr. Tunnell to provide his treatment notes on appellant, with special emphasis on any history appellant might have provided on the stress he felt working with the public. After such further development as may become necessary, the Office shall issue an appropriate final decision on

⁹ *James Robinson, Jr.*, 53 ECAB 417 (2002) (holding that an employee's VA disability rating is not determinative of workers' compensation benefits).

whether appellant sustained an emotional condition in the performance of duty as a result of working with the public at the Norman employing establishment.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion of the Board.

Issued: April 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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