

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

C.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Santa Clarita, CA, Employer)

**Docket No. 10-912
Issued: January 6, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 18, 2010 appellant filed a timely appeal from a December 23, 2009 merit decision of the Office of Workers' Compensation Programs. 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 due to factors of his federal employment.

FACTUAL HISTORY

On March 23, 2009 appellant, a 44-year-old part-time flexible distribution clerk, filed an occupational disease claim for an emotional condition he attributed to his employer for allegedly violating rules established under the labor relations manual and the American Postal Workers' Union. He stopped work on December 30, 2008.

Appellant submitted a March 27, 2009 work capacity report from Dr. Daniel O. Mongiano, a family practice physician, who noted treatment for interpersonal and work-related stress. Dr. Mongiano excused appellant from work December 31, 2008 through March 27, 2009.

By decision dated May 15, 2009, the Office denied the claim, finding that appellant did not establish any compensable employment factors.

Appellant alleged he was subjected to discrimination and harassment by management since returning to work on June 1, 2009. He alleged that management repeatedly treated him unfairly by refusing to advance him to a regular position, in violation of his employment contract and union rules. Appellant alleged that, after two coworkers retired, management never posted their positions for bid.

Appellant alleged that his supervisor gave him additional employment duties to perform, but he was not provided enough time to complete them. His failure to complete his assignments became the basis of his supervisor's recommendation that he be removed from his registry cage job. Appellant asserted that he was singled out for poor performance and held to standards different than those of his coworkers. He noted that none of the other registry cage employees had to do additional duties. Appellant also alleged that his supervisor falsely accused him of taking more breaks than allowed.

On May 31, 2009 appellant, through his attorney, requested an oral hearing, which the Office conducted on September 11, 2009.

Appellant testified that he stopped working on December 31, 2008, because he was experiencing chest pains, which he attributed to 10 years of discrimination at the employing establishment. He described an incident when his supervisor told him to perform additional employment duties, which he did not want to do because he was already performing a strenuous job. At that time, another employee was standing nearby "doing absolutely nothing." Appellant stated that this frustrated and angered him, so much so that he experienced chest pains and left work to seek medical attention. He also alleged that his leave requests were denied, while other coworkers' leave requests were granted. Appellant reiterated that he was denied a custodial position, despite his seniority. He was told that there was not enough work to justify hiring him. Appellant was also told that there were no custodial positions available.

By decision dated December 23, 2009, an Office hearing representative affirmed the May 15, 2009 decision. The Office found that appellant did not establish his allegations of administrative error or abuse.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,²

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

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.³ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ 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.⁵

To establish that he sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she 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.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁷ 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.⁸

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 reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.⁹ 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.¹⁰ Further, in cases involving harassment or discrimination allegations, there must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.¹¹

Administrative and personnel matters, although generally related to the employee's employment are administrative functions of the employer rather than the regular or specially

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

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

¹⁰ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹¹ *See Ruth C. Borden*, 43 ECAB 146 (1991).

assigned work duties of the employee and are not covered under the Act.¹² 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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

ANALYSIS

The Office denied appellant's emotional condition claim because he did not establish any compensable employment factors. The Board must, therefore, review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant attributed his emotional condition to his employer allegedly violating established rules and his employment contract in the denial of a regular position. Appellant did not address with specificity how any specific provision of the manual or contract was violated by the employer. He therefore failed to establish the factual component of this allegation. Appellant also attributed his condition to 10 years of discrimination and harassment in that his employer did not give him the job he requested. An employee's dissatisfaction with being, or not being given specific job duties constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and, absent evidence of error or abuse, is not compensable.¹⁷

¹² See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹³ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁴ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁵ *Dennis J. Balogh*, *supra* note 7.

¹⁶ *Id.*

¹⁷ *Robert Breeden*, 57 ECAB 622 (2006).

Appellant also alleged that his leave requests were denied, while those of his coworkers were granted. These allegations pertain to administrative or personnel matters and are unrelated to the employee's regular or specially assigned work duties and thus do not generally fall within the coverage of the Act.¹⁸ Whether the employing establishment erred or acted abusively is a question of reasonableness.¹⁹ There is no probative evidence of record demonstrating error, abuse, or that the employing establishment acted unreasonably.²⁰

Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.²¹ Appellant submitted no documentation, witness statements or other evidence to support his allegations of harassment or discrimination. For these reasons, the Board finds appellant has not established a compensable employment factor with respect to these allegations.

Appellant attributed his emotional condition to being assigned to perform additional and unwanted employment duties while another coworker stood nearby "doing absolutely nothing." He asserted that he was singled out for poor performance and held to standards different than those of his coworkers. The Board notes that the assignment of work is also an administrative function.²² 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.²³ Appellant did not assert that his actual work duties caused his alleged medical conditions. Rather, he disagreed with the manner in which job assignments were made. Accordingly, appellant has not established a compensable factor of employment in this regard.

Appellant generally alleged that he was not given the proper amount of time to complete these additional duties. Emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.²⁴ The Board finds, however, that appellant has not established the factual aspect of his claim regarding his workload or time constraints. Appellant submitted a September 2007 workload summary and generally discussed the additional employment duties he was assigned and alleged that he was unable to complete them in the time allotted. His allegations lack specificity and do not clearly identify any particular

¹⁸ *Sandra Davis*, 50 ECAB 450 (1999).

¹⁹ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

²⁰ *Edgar G. Maiscott*, 4 ECAB 558 (1952).

²¹ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

²² *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²³ *C.S.*, 58 ECAB 137 (2006).

²⁴ *Trudy A. Scott*, 52 ECAB 309 (2001).

work duty that caused his alleged emotional condition.²⁵ Consequently, appellant has not established a compensable employment factor with regard to this allegation.

For these reasons, appellant has not established a compensable employment factor under the Act. He has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.²⁶

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition due to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2011
Washington, DC

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

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

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

²⁵ See *Robert Breeden*, 57 ECAB 622 (2006) (the claimant did not establish the factual aspects of assertions regarding work duties where the claimant's statements lacked specificity and where the claimant did not submit sufficient supporting evidence).

²⁶ 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).