

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ARTHUR L. EVERHART and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Jackson, MS

*Docket No. 98-925; Submitted on the Record;  
Issued April 26, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof to establish that his chest pain and heart condition were caused by factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On October 11, 1996 appellant, then a 59-year-old mailhandler, filed a claim for an occupational disease (Form CA-2) assigned number 06-665557 alleging that on September 29, 1996 he first realized that his heart condition<sup>1</sup> was caused or aggravated by his employment.<sup>2</sup>

By letter dated December 16, 1996, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office then advised appellant to submit supportive factual and medical evidence. In response, appellant submitted factual and medical evidence.

By decision dated February 11, 1997, the Office found the evidence of record insufficient to establish that appellant sustained chest pain and a heart condition in the performance of duty. In a December 24, 1997 letter, appellant requested reconsideration of the Office's decision.

By decision dated January 20, 1998, the Office denied appellant's request for reconsideration without a merit review on the grounds that he neither raised substantive legal questions nor submitted new and relevant medical evidence, and thus, his request was insufficient to warrant a review of the prior decision.

---

<sup>1</sup> In a telephone conversation with a representative of the Office, appellant stated that he did not have a heart attack, rather he had two episodes of chest pain which were due to work-related stress.

<sup>2</sup> On October 10, 1996 appellant filed a traumatic injury claim (Form CA-1) assigned number 06-066555 alleging that he sustained chest pain on September 29, 1996 due to his stressful working conditions. The Office consolidated this claim and the instant claim into claim assigned number 06-0665557.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that his chest pain and heart condition were caused by factors of his federal employment

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>3</sup>

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>4</sup> If a claimant does implicate a factor of employment, the Office 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.<sup>5</sup>

In the present case, appellant has alleged that he sustained chest pain and a heart condition as a result of a number of stressful employment incidents. Several of appellant's allegations involve administrative or personnel matters. As a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.<sup>6</sup> Absent

---

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>4</sup> *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566; *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Margaret Krzycki*, 43 ECAB 496, 501-02 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.<sup>7</sup> Furthermore, an employee's complaints about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.<sup>8</sup> Determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>9</sup> To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.<sup>10</sup>

Appellant's allegations regarding disciplinary action,<sup>11</sup> difficulty in receiving his pay, the miscalculation, and denial of leave and break time,<sup>12</sup> being watched and questioned about his job performance,<sup>13</sup> safety concerns, the employing establishment's failure to respond to his concerns and requests, his performance appraisal,<sup>14</sup> and the filing of grievances<sup>15</sup> relate to administrative matters. Appellant has failed to establish the employing establishment committed error or abuse in handling these matters. An undated response from the employing establishment concerning appellant's allegation that he was mistakenly placed in a leave without pay status indicated no knowledge of such status. In response to appellant's allegation concerning unsafe working conditions, the employing establishment indicated that there were no chemicals at a letter scrapper where appellant worked, but that there was dust at this machine which caused allergies to flare up and the machine to clog up. Although there was dust in appellant's work environment, there was no evidence of record indicating that this rendered his environment unsafe. Inasmuch as there is no evidence of record indicating that the employing establishment committed error or abuse in handling any of the above administrative or personnel matters, appellant has failed to establish a compensable employment factor under the Act.

---

<sup>7</sup> *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>8</sup> *Daniel B. Arroyo*, 48 ECAB 204 (1996).

<sup>9</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>10</sup> *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

<sup>11</sup> *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>12</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>13</sup> *Id.*

<sup>14</sup> *James E. Woods*, 45 ECAB 556 (1994).

<sup>15</sup> *Peggy R. Lee*, 46 ECAB 527, 534 (1995); *David F. Cianiolo*, 45 ECAB 731 (1994); *Jeffrey S. Miller*, 41 ECAB 707 (1990).

Regarding appellant's allegation of the denial of a promotion by the employing establishment, the Board has previously held that denials by an employing establishment of a request for a different job or promotion are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>16</sup> Accordingly, appellant has not established a compensable factor of employment under the Act.

Appellant has also alleged that he was harassed, threatened, retaliated against, provoked and discriminated against by the employing establishment. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.<sup>17</sup> Mere perceptions alone of harassment and discrimination are not compensable under the Act.<sup>18</sup> To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment with probative and reliable evidence.<sup>19</sup> Appellant failed to provide any such probative and reliable evidence in this case, and thus, he failed to establish a compensable employment factor.

Appellant has further alleged that the employing establishment disregarded his physical restrictions as indicated by his physician. This could constitute a compensable factor of employment, if substantiated by the record.<sup>20</sup> In this case, however, no supporting evidence was submitted. Rather, appellant merely made a general allegation without providing specific details about the duties that he was required to perform by the employing establishment that were not within his physical limitations. Therefore, appellant has failed to establish a compensable employment factor under the Act.

Additionally, appellant has alleged that he was reassigned and that he was unable to complete his regular work duties. He contended that he had to perform the work of his coworkers. Appellant's reassignment involves an administrative matter.<sup>21</sup> The Board has recognized that overwork can be a compensable factor.<sup>22</sup> To the extent that appellant may be alleging he was overworked as a result of the reassignment, he must submit additional factual details and other evidence supporting that he was overworked.<sup>23</sup> He has not done so in this case. The Board finds that appellant has not established a compensable factor of employment with respect to his reassignment.

---

<sup>16</sup> *Michael Thomas Plante*, *supra* note 12.

<sup>17</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741 (1990); *Pamela R. Rice*, 38 ECAB 838, 843 (1987).

<sup>18</sup> *Wanda G. Bailey*, 45 ECAB 835 (1994); *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>19</sup> *Ruthie M. Evans*, *supra* note 18.

<sup>20</sup> *Diane C. Bernard*, 45 ECAB 223 (1993); *Minnie L. Bryson*, 44 ECAB 713 (1993).

<sup>21</sup> *James W. Griffin*, 45 ECAB 774, 778 (1994).

<sup>22</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>23</sup> *Id.*

Appellant has not provided the specific information necessary to determine whether the incidents of employment to which he attributed his chest pain and heart condition occurred as alleged and constituted compensable factors of employment. He, therefore, has not established that his chest pain and heart condition were causally related to factors of his employment. In view of this decision, it is unnecessary to consider the medical evidence to determine whether appellant's chest pain and heart condition were related to compensable factors of his employment. Such factors must be identified and established before it can be determined, through medical evidence, whether a claimant's disability is causally related to such factors.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>24</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>25</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>26</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>27</sup>

On appeal, appellant contended that his chest pain and heart condition were caused by work-related stressful conditions, which included, reassignment, inability to perform his duties, leave, overwork, safety concerns and the employing establishment's failure to respond to his concerns, disciplinary action. Appellant's contentions were previously raised before the Office at the time of its February 11, 1997 decision. Thus, appellant has failed to advance a point of law or a fact not previously considered by the Office. The Board notes that appellant did not submit any additional medical evidence. Accordingly, the Office properly refused to reopen appellant's case for a merit review under section 8128(a) of the Act.

The January 20, 1998 and the February 11, 1997 decisions of the Office of Workers Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
April 26, 2000

---

<sup>24</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>25</sup> 20 C.F.R. §§ 10.138(b)(1)-(2).

<sup>26</sup> *Id.* at § 10.138(b)(2).

<sup>27</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member