U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT McDANIEL and U.S. POSTAL SERVICE,
POST OFFICE, St. Petersburg, FL

Docket No. 99-553; Submitted on the Record;
Issued October 26, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an emotional condition due to compensable factors of his employment.

On May 13, 1997 appellant, then a 44-year-old supervisor of transportation operations, filed a claim for work-related stress and depression. He attributed his condition to harassment and unfair treatment by his superiors. In a June 9, 1997 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. In a July 5, 1997 letter, appellant requested a hearing before an Office hearing representative which was conducted on February 13, 1998. In an April 24, 1998 decision, the Office hearing representative indicated that appellant's claim was based on reaction to administrative actions of the employing establishment. He found that appellant had not established that such actions were in error or abusive. The Office hearing representative affirmed the Office's June 9, 1997 decision. In an August 7, 1998 letter, appellant requested reconsideration, presenting evidence of further incidents which he contended showed harassment by his superiors. In an October 20, 1998 merit decision, the Office denied appellant's request for modification on the grounds that the evidence of record showed his stress reaction was due to administrative actions which had not been proven to be abusive or erroneous.

The Board finds that appellant has not established that he sustained an emotional condition due to compensable factors of his employment.

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 within 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

Appellant made a general allegation that his emotional condition was due to harassment by his supervisor. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[4]

Appellant contended that white employees had been transferred noncompetitively into supervisory positions without going before a promotion board while he had been denied the same opportunity on several occasions. Promotions are an administrative matter not related to a claimant's assigned duties. Appellant has not established that discrimination occurred in promotions at the employing establishment but has only submitted an unsupported allegation of such discrimination. He therefore has not established error or abuse by the employing establishment in that area.

Appellant also contended that he was denied the opportunity to serve in extended detail assignments which had been given to other employees. He specifically noted that his supervisor, Janis Parker, refused to release him for a detail in 1996 for more than 60 days, even though another employing establishment official had indicated that 60 days was insufficient time to receive training for the detail position. Appellant stated that his request to extend the detail assignment was denied. Ms. Parker replied that she needed appellant back in 60 days because his replacement would have to report back to her job in that time frame. The actions taken in regard to the length of the detail assignment were administrative in nature and not related to the

[1] *Lillian Cutler,* 28 ECAB 125 (1976).

[2] *Artice Dotson,* 41 ECAB 754 (1990); *Allen C. Godfrey,* 37 ECAB 334 (1986); *Buck Green,* 37 ECAB 374 (1985); *Peter Sammarco,* 35 ECAB 631 (1984); *Dario G. Gonzalez,* 33 ECAB 119 (1982); *Raymond S. Cordova,* 32 ECAB 1005 (1981); *John Robert Wilson,* 30 ECAB 384 (1979).

[3] *Thomas D. McEuen,* 41 ECAB 387 (1990) *reaff'd on recon.,* 42 ECAB 566 (1991).

[4] *Joan Juanita Greene,* 41 ECAB 760 (1990).

assigned duties performed by appellant. The desire for a detail assignment is, in essence, a desire to work in a different position and is therefore not a compensable factor of employment.[5] There is no evidence that Ms. Parker erred or was abusive in limiting the length of the detail assignment or denying appellant's request to extend the assignment.

Appellant contended that, while he was on other assignments or out on sick leave, his replacements were given working hours of 11:00 a.m. to 7:30 p.m. rather than his work hours of 1:00 p.m. to 9:30 p.m. He stated that, when he requested similar hours, his request was denied. Ms. Parker indicated that, on the two occasions cited by appellant, one replacement was given the earlier hours so she could receive training from another supervisor and was then given the same hours that appellant worked. On the other occasion, Ms. Parker indicated that she had to share appellant's replacement with another supervisor performing special projects so her hours were adjusted to allow the performance of other duties at the employing establishment. She stated that she refused to adjust appellant's hours because she needed him to be present for the end of the workday at the employing establishment. These actions, therefore, were administrative in nature and have not been shown to constitute abuse.

Appellant stated that Ms. Parker generally had a dictatorial management style, would not accept the opinions of others, and managed by using intimidation tactics. He claimed that she was frequently condescending. Appellant contended that she would not allow her managers, including appellant, to make decisions without her approval or consent. He stated that she constantly found fault in subordinates yet did not admit her own mistakes. Appellant indicated that on July 17, 1996 he had a conversation with Ms. Parker in which she became intimidating. In response to queries about the refusal to extend the detail assignment, appellant reported that Ms. Parker responded that she was the boss and if appellant did not like it, then it was too bad. The conversation itself, however, does not establish that Ms. Parker engaged in harassment of appellant at that time. Appellant did not submit any evidence to establish that his characterization of Ms. Parker's management style was accurate and did not demonstrate how such a management style would affect his performance of his assigned duties such that it would constitute a compensable employment factor.

Appellant stated that in the fall of 1996 he sought another detail assignment and made an application to be a letter carrier in another part of the employing establishment. Appellant contended that Ms. Parker blocked his efforts to get a detail assignment and interfered with his efforts to take the letter carrier position by informing him that he had to take the examination for letter carriers before he could take the position. Ms. Parker denied appellant's claim and stated that she was following employing establishment procedures. The efforts by appellant to obtain other positions were a reflection of his dissatisfaction with his current position and his desire for a different working environment. His actions, therefore, were not a part of his assigned duties and did not constitute a compensable factor of employment. He did not submit any evidence to show that the actions of Ms. Parker or the employing establishment were in error or abuse.

Appellant indicated that on November 19, 1996 he was given an investigative interview concerning an incident from the day before. Appellant stated that the employing establishment

[5] *Minnie L. Bryson*, 44 ECAB 713 (1993).

was making pickups from a new corporate customer. The letter carrier received verbal instructions to make the pickup. On November 18, 1996 however the regular letter carrier on that route was on leave and the replacement carrier did not receive the verbal instructions to pick up the mail from the customer. Appellant stated that, when he realized that the mail was not picked up, he attempted to call the customer but did not get an answer. He therefore assumed that the mail would not be left outside the building. The customer complained the next day that mail was not picked up and was left overnight outside the corporate offices. Appellant stated that, after the interview, he sought medical treatment and was placed on sick leave by his physician. He contended that, while on sick leave, the employing establishment sent him a letter of warning arising from the November 18, 1996 failure to have mail picked up. Appellant contended that it was the customer's responsibility not to leave mail unsecured. His reaction, however, was not due to the performance of his assigned duties but to the investigation of the incident by his superiors and the subsequent disciplinary action. Investigations[6] and disciplinary actions[7] are administrative actions by the employing establishment and therefore do not constitute compensable factors. There is no evidence that established that the actions taken pursuant to this incident were taken in error or were abusive.

Appellant stated that he returned from sick leave in March 1997 but, before his return, his work schedule was changed without explanation. He contended that the sole purpose of the schedule change was harassment. Appellant claimed that other employees informed him that the changes were solely because Ms. Parker disliked him and warned him to watch his back. Appellant, however, did not submit any evidence to support this allegation. A change in the work schedule is an administrative matter and therefore not a compensable factor of employment. Appellant did not establish that the change in schedules was a form of abuse by his supervisor.

In a May 28, 1997 letter, appellant stated that when he submitted his initial claim form to his supervisor he also submitted medical documentation, including original documents. He indicated that an injury compensation officer subsequently informed him that his claim was not accompanied by medical documentation. Appellant contended that his supervisor had withheld the medical evidence he had submitted. Ms. Parker denied that she had withheld any documents. Appellant failed to establish that the events occurred as he alleged.

Appellant indicated that, after he returned from another extended period of sick leave in October 1997, Ms Parker gave him a performance appraisal of unacceptable merit evaluation. He related that Ms. Parker cited his absence from work on leave, the letter of warning he had received and the failure to cover some mail runs due to scheduling errors. Appellant contended that the performance appraisal was part of Ms. Parker's efforts to harass him. He contended that another supervisor who had received a letter of warning did not receive an unacceptable evaluation. Appellant indicated that a third supervisor had prepared a schedule that resulted in three missed routes but claimed that she did not receive any disciplinary action. A performance appraisal is an administrative action and is therefore not a compensable factor of employment.

[6] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[7] *Effie O. Morris*, 44 ECAB 470 (1993).

While appellant has cited examples of what he perceived to be disparate treatment, he has not submitted any evidence that the performance appraisal was erroneous or intended to be a form of harassment.

Appellant noted that he received another letter of warning on January 28, 1998 due to an incident in December 1997. He stated that, on December 19, 1997, he called corporate customers to find out if they would be closed on December 26, 1997. Appellant indicated that he informed Ms. Parker and his fellow supervisors of the closures by corporate customers and posted notice on the bulletin board for the drivers he supervised. He noted that, on December 26, 1997, the driver on one route asked him to confirm the closure of one corporate customer, Raymond James, in support of the driver's request to go home early. Appellant indicated that he made the call and received no answer. Ms. Parker was subsequently advised that Mr. James had several trays of mail to be picked up that, under Security and Exchange Commission rules, had to be sent out within 48 hours. Ms. Parker stated that she was not informed of the closure of the corporate customer. Appellant submitted the statements of seven drivers who stated that they were aware that Mr. James had canceled its pick up for December 26, 1997 by reading the notice posted by appellant. The letter of warning also indicated that appellant had made scheduling errors that either left runs uncovered or put two drivers on one run. In addition, the letter of warning stated that appellant had not posted information to drivers advising them that one entrance to the employing establishment would be closed due to construction. Appellant stated that, before he was assigned the scheduling of drivers, the schedule prepared by another supervisor was reviewed by Ms. Parker. He indicated that Ms. Parker did not review the schedules he prepared. In regard to the construction, appellant stated that there were several entrances into the employing establishment so he assumed the employees would use common sense and avoid the construction by using one of the other entrances into the employing establishment. The employing establishment subsequently issued an April 14, 1998 letter of warning to appellant for falsification of documents related to the January 28, 1998 letter of warning. The employing establishment stated that appellant had altered the notice of closed corporate offices that he had posted to show that he had routed it to Ms. Parker and his fellow supervisors when the original notice did not contain any routing instructions. The letter of warning also indicated that appellant had not prepared and posted the notice of construction until after Ms. Parker had asked him whether he had posted it.

As stated previously, disciplinary actions are not considered compensable factors of employment unless error or abuse has been shown. Appellant claimed that he was erroneously charged with failing to have mail picked up from a corporate customer on December 26, 1997 by showing that he had informed the drivers of the closure of the company. The officials at Mr. James, however, indicated that they did not cancel the pick up of mail that day. It is unclear from the facts present in the record whether appellant accurately or incorrectly determined that the mail pick up for December 26, 1997 had been cancelled. The record does show, however, that appellant did not establish that he had informed his supervisor, Ms. Parker, of the change even though he had claimed to have done so. Appellant, therefore, has not established that the disciplinary action taken by the employing establishment was in error or abusive.

In his request for reconsideration, appellant noted that his supervisor had issued to him a proposed reduction in grade to a position as a part-time flexible tractor-trailer operator.

Ms. Parker stated that, in dealing with an industrial accident on April 28, 1998, appellant did not perform an on-site investigation of the accident as required, did not issue the injured employee a letter to his physician as required by employing establishment rules, and did not advise the employee on his return to the employing establishment that he was on physical restrictions as specified by the employee's physician. Ms. Parker indicated that work was available for the injured employee within his restrictions. She also stated that appellant had not provided the information on the incident in time for a meeting she was attending on May 13, 1998. Ms. Parker also found that appellant had erred in scheduling routes in that, on May 18, 1998, he had two employees scheduled for the same route and had left two routes open, requiring two employees to perform overtime to complete these routes. Appellant claimed that his supervisor was aware that he would not be able to perform the duties of a tractor-trailer operator because of the medication he was taking for his depression. He stated that, when the employee reported the injury on April 28, 1998, it was near the end of the shift and the employee felt he had not been injured. Appellant noted that the employee first saw the physician on May 1, 1998. He stated that he faxed the letter to the physician at his office. Appellant contended that Ms. Parker was fully aware of the incident by May 12, 1998 and did not need further information, particularly as she had instructed him on the form of discipline to apply to the employee. He indicated that he was absent from work for the period May 19 through June 9, 1998 under the provisions of the Family Medical Leave Act. Appellant claimed that Ms. Parker refused to accept his medical documentation and threatened to place him as absent without leave.

Appellant's description of the incidents show that his reaction was not to his performance of his assigned duties but to the proposed reduction in rank. This disciplinary action is an administrative matter. There is no evidence that the proposal was in error or a form of abuse. Appellant, therefore, has not established that the most recent disciplinary action was a compensable factor of employment. Similarly, use of sick leave is an administrative matter and not within appellant's assigned duties. Therefore, any action relating to appellant's use of sick leave is not a compensable factor of employment unless appellant has established error or abuse in the employing establishment's reaction to his use of leave. Appellant has not shown such error or abuse in this case.

While appellant has made numerous allegations of claims of harassment, error and abuse by his supervisor, he has not established that these incidents occurred precisely as he alleged, has not established that the incidents were within his assigned duties, or has not established that the administrative actions were taken in error or were abusive. He therefore has not met his burden of proof in establishing that he sustained an emotional condition within the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated October 20 and April 24, 1998 are hereby affirmed.

Dated, Washington, DC
October 26, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member