U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYFIELD HILL and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

Docket No. 01-983; Submitted on the Record;
Issued December 6, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On or about July 19, 1999 appellant, then a 49-year-old letter carrier, filed a claim for an emotional stress condition, which he attributed to factors of his federal employment. In subsequent statements of July 19 and November 8, 1999, he described the events to which he attributed his emotional condition. Appellant advised that he underwent a right shoulder surgery on January 7, 1998 and returned to work three weeks later, which was too soon following surgery. He stated that he returned to work because his employer issued a letter to report to work by February 2, 1998 or disciplinary action would be taken. Appellant stopped work on February 2, 1998 after working a few hours because of severe pain. He stated that he saw his surgeon, Dr. Schickendantz, on February 19, 1998 for his follow-up from surgery. Dr. Schickendantz wrote a letter to clear up the matter, but it was not accepted. Appellant noted that he was in pain from his right shoulder surgery and that his left shoulder needed surgical repair. He returned to work on March 10, 1998. Appellant stated that his claim for compensation during this period of disability was denied by the Office of Workers' Compensation Programs on March 27, 1998.

Appellant underwent left shoulder surgery on May 13, 1998. He returned to work on August 10, 1998. Appellant stated that he was not in receipt of compensation for this period. He also noted that a friend, who was a coworker, had passed away. Appellant also stated that he was being scheduled for a second opinion evaluation.

Appellant related that he sustained an injury to his right wrist on September 18, 1998. Due to his bilateral shoulder condition and right wrist problem, appellant started a limited-duty position. Appellant related that he had been working answering telephones with a head set and pushing buttons for 10 months and that his employer wanted him to accept another job to make him more productive. He advised that he had been doing his best in performing the job after having undergone two surgeries and having right wrist pain. Appellant further noted that he was

a veteran of the United States Marine Corps and was wounded in combat. He advised that it was wrong for his employer to try to change his duties. Appellant stated that the injury compensation office had written to Dr. Shamir on July 19, 1999 to determine his medical capabilities. He alleged that during a meeting on September 28, 1999 to discuss his job duties, he was harassed and belittled.

Appellant stated that he had filed the present claim on July 19, 1999, but his employer advised him on July 23, 1999 that it had been misplaced. On July 26, 1999 a specialist from the injury compensation unit confirmed that his claim had been located.

By decision dated March 27, 2000, the Office denied appellant's claim on the basis that he failed to establish that the claimed emotional condition arose within the performance of duty. Appellant's attorney requested reconsideration in a letter dated October 27, 2000 and submitted evidence not previously considered by the Office. By decision dated November 21, 2000, the Office denied appellant's request on the basis that the evidence submitted in support of the request for review was not sufficient to warrant review of the prior decision.[1]

The Board has duly reviewed the case record in this appeal and finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to his condition. 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 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 factors such 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 desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[2] 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.[3] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her 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

[1] Although the Office advised it treated appellant's reconsideration request as a nonmerit decision, the Board notes that by its language contained within the November 21, 2000 decision, a merit review of the additional evidence was conducted. Accordingly, the Board will conduct a merit review of the evidence.

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

[3] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[4]

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. Perceptions and feelings alone are not compensable.[5] Appellant alleged that he was forced to return to work soon after his right shoulder surgery or face disciplinary action. A January 30, 1998 letter from the employing establishment indicated that appellant's doctor signed off on a limited-duty job offer authorizing appellant's return to work. The letter further indicated that appellant was to report to work on a limited-duty basis effective February 2, 1998 and the failure to report to work could result in disciplinary action. As the employing establishment had medical authorization releasing appellant to work, the employing establishment acted reasonably in directing appellant to return to work February 2, 1998. Although a subsequent letter dated February 19, 1998 from Dr. Schickendantz recommended that appellant be off of work completely from February 2 through March 8, 1998, appellant's disagreement with an Office's March 27, 1998 decision denying compensation for disability from early February to early March results from appellant's frustration over the processing of his compensation claim which is not a compensable factor of employment.[6] A January 23, 1998 letter from the Office advised appellant of the evidence necessary to prove his work stoppage of February 3, 1998 was due to his employment-related condition. Accordingly, any reaction to appellant's return to work on February 2, 1998 or disagreement over his denial of compensation in early 1998 is not considered a compensable factor of employment.

Appellant's reaction to a coworker's death who was also a friend is not compensable, as it does not arise out of appellant's work duties.

Appellant alleged several incidents which fall into the category of administrative or personnel matters. The Board has found that, while administrative or personnel matters are not generally related to the duties of the employee, they will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[7]

Appellant's reaction to receiving correspondence from the employing establishment regarding returning to work, job offers, and the notification of his responsibilities concerning his injury claim, or copies of letters generated to appellant's physicians is considered self-generated. The record is devoid of any evidence to establish administrative error or abuse.

The scheduling of a fitness-for-duty and/or second opinion examination is an administrative function of the employer as is the assignment of work duties. The record reflects

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

[5] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[6] *See Thomas J. Costello*, 43 ECAB 951 (1992).

[7] *See Richard Dube*, 42 ECAB 916 (1991).

that appellant has multiple accepted conditions by the Office and had been in a limited-duty position for an extended period of time. There is no evidence of error or abuse by the employer in scheduling medical examinations as it is reasonable to assess appellant's abilities to find a more permanent position.

There is no evidence of error or abuse by the employing establishment in not being able to locate appellant's claim for a few days. In a July 23, 1999 memorandum, the employing establishment advised that the Form CA-2 appellant filed a few days ago could not be found and requested appellant complete a new Form CA-2. This is not an unreasonable request. Moreover, appellant stated his claim had been located on July 26, 1999, when a specialist from the injury compensation unit telephoned. Accordingly, no error or abuse has been shown.

Moreover, no error or abuse is found in the employing establishment attempt to assign more permanent and productive work duties to appellant. The record reflects that the Office, in a letter dated February 10, 1999, directed the employing establishment to develop a permanent rehabilitation job which encompassed the work restrictions specified by Dr. Schickendantz on December 17, 1998. Appellant's only job duties were answering the telephone while wearing a headset and using a finger to push buttons. A job offer dated March 1, 1999 as a modified carrier was offered to appellant, which he rejected March 9, 1999. The employing establishment sent a letter to Dr. Shamir on July 16, 1999 to determine appellant's physical capabilities. The letter also contained information such as appellant's current duties, salary and the hope of making appellant a more productive employee. Another job offer dated November 3, 1999 was offered to appellant followed by an amended job offer on November 18, 1999. In a November 19, 1999 letter, the Office found the position to be suitable. There is no evidence of error or abuse in the employing establishment's exercise of its right to modify appellant's work duties and to make him a more productive employee. As previously noted, appellant's desire to perform a certain job is not compensable, nor is his frustration at not being able to keep working a specific job. Any resultant stress from receiving copies of such correspondence is personal to appellant.

Appellant alleged that he was harassed or belittled during a September 28, 1999 meeting to discuss his job duties. An Equal Employment Opportunity (EEO) complaint was filed pertaining to appellant's perceived harassment regarding that a change in his job position from a modified carrier to a modified clerk would cause him to work outside his medical restrictions. The Board has held that actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.[8] Mere perceptions or feelings of harassment, however, are not compensable. 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.[9] Appellant failed to provide any such probative and reliable evidence in the instant case. As no final decision has been rendered regarding the EEO complaint, appellant's allegations alone are not relevant in establishing the factual portion of appellant's harassment claim. A September 28, 1999 meeting was an attempt

[8] *See Marie Boylan*, 45 ECAB 338 (1994); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[9] *See Ruthie M. Evans, supra* note 5.

by management to find more productive work for appellant. In a letter dated December 22, 1999, the employing establishment advised that they met with appellant in order to develop a more productive job offer and appellant became upset at the development of a more productive job. The employer stated that the job offer which was created at the meeting was rejected by appellant, but ruled suitable by the Office. Accordingly, appellant has failed to present a factual basis for his claim of harassment during the September 28, 1999 meeting. Moreover, despite appellant's assertions, the record reflects that there was never an issue regarding appellant's ability to perform his duties of answering the telephone while wearing a headset and using a finger to push buttons.

In conclusion, appellant has not submitted sufficient evidence to establish a compensable factor. Therefore, he failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.[10]

The decisions of the Office of Workers' Compensation Programs dated November 21 and March 27, 2000 are hereby affirmed.

Dated, Washington, DC
December 6, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] As appellant has failed to allege a compensable factor of employment substantiated by the record, the medical evidence need not be discussed; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).