U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Wallingford, CT

Docket No. 01-996; Submitted on the Record;
Issued December 13, 2001

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On September 9, 1999 appellant, then a 51-year-old customer service supervisor, filed a claim[1] alleging that his major depressive disorder, panic disorder and post-traumatic stress disorder were caused by his termination on August 13, 1999 from the employing establishment after approximately 30 years of work.[2] Appellant admitted that, during a street observation of a letter carrier on June 22, 1999, he exited his vehicle and left it running with the key in the ignition, in violation of the employing establishment's vehicle dismount policy. Appellant asserted that his termination because of this incident was "unjust, unfair, [and an] over reaction." Appellant related that, since August 13, 1999, he experienced "constant anxiety, panic attacks and depression," requiring psychiatric treatment and medication.[3]

On June 17, 1999 the employing establishment enacted a "zero deviation policy" on proper vehicle dismount procedures. The vehicle dismount policy provided that "[f]ailure to follow dismount procedures is a willful and serious violation of postal policy. All drivers" in

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[1] Appellant filed both a notice of traumatic injury and a notice of occupational disease, pertaining to his termination from the employing establishment on August 12, 1999.

[2] In an October 1, 1999 letter, appellant was advised of the type of medical and factual evidence needed to establish his claim.

[3] In a November 8, 1999 statement, Postmaster Michael Schraeder, appellant's supervisor, noted that appellant had been detailed to the Wallingford Post Office from "spring 1999 until August 12, 1999 … as an Associate Supervisor," with duties including daily reports, handling customer complaints, employee discussions and "street observations of carriers." Mr. Schraeder noted that appellant's performance was satisfactory, until the June 22, 1999 incident.

appellant's work unit were required to follow five "steps when dismounting a motor vehicle: (1) [c]urb the wheels; (2) [p]lace the [g]ear [s]elector in [p]ark ([r]everse for a standard transmission); (3) [s]et the [p]arking [b]rake; (4) [t]urn the [i]gnition [o]ff and [t]ake the [k]ey [w]ith [y]ou; (5) [c]hock the wheels." The policy also stated that failure to follow these steps constituted "at risk behavior. … Just being observed violating these procedure is sufficient to warrant disciplinary action, up to and including removal from the [employing establishment]."

By notice dated July 1, 1999, the employing establishment advised appellant that it proposed to terminate his employment due to the June 22, 1999 incident in which he violated proper vehicle dismount procedures by failing to leave his motor vehicle in a safe and proper manner.[4] The postmaster noted that appellant had attended mandatory emergency safety meetings on June 16 and 17, 1999 emphasizing the zero deviation policy for vehicle dismount procedures. At these meetings, appellant, as part of his supervisory duties, met one-on-one with approximately 20 letter carriers to review the zero deviation policy. However, less than one week after these meetings, appellant violated this policy on June 22, 1999. The postmaster therefore proposed to terminate appellant from the employing establishment, as he willfully violated the zero deviation vehicle dismount policy that he was obligated to enforce. Appellant was provided 10 days in which to respond.

On August 11, 1999 the employing establishment finalized appellant's removal from employment. District Operations Manager John Steele noted that appellant, a supervisor, was placed on notice by the mandatory June 16 and 17, 1999 meetings of the seriousness of violating the vehicle dismount policy. Mr. Steele therefore found appellant's removal was justified. Mr. Steele noted that appellant had not responded to the proposed notice of termination. However, Mr. Steele did speak with Marie Peterson, appellant's representative, who asserted that a single violation of the vehicle dismount policy was not sufficient grounds on which to terminate appellant from employment.

On August 16, 1999 appellant appealed the employing establishment's August 11, 1999 decision terminating him from employment to the Merit Systems Protection Board (MSPB).

In an MSPB voluntary settlement agreement dated October 21 and finalized on November 25, 1999, the employing establishment voluntarily agreed to cancel appellant's termination and expunge all evidence of his removal from postal records, and instead suspend appellant for a period equal to the time he was in nonpay status subsequent to his removal. The employing establishment agreed to restore appellant to his former position, at the same pay and grade, within one week of finalizing the settlement agreement, and to place appellant in pay status at the time his attorney signed the agreement. The employing establishment also agreed to review appellant's suspension one year from his restoration date, and remove all mention of that disciplinary action from appellant's records if no additional safety violations occurred.

[4] The employing establishment alleged that on June 22, 1999, while observing carrier Brian Dunleavy, appellant "pulled up behind his vehicle … exited [his] vehicle without turning it off and without taking the key with [him]." Appellant then began to fill out an observation report. Mr. Dunleavy then advised appellant that appellant's engine was running, and appellant replied that he was aware of this, and continued to complete the form."

By decision dated April 17, 2000, the Office denied appellant's claim on the grounds that the claimed emotional condition did not arise in the performance of duty. The Office found that appellant attributed his condition to his termination from employment, which was an administrative, disciplinary matter not considered to be in the performance of duty. The Office further found that there was no evidence of error or abuse by the employing establishment regarding appellant's termination and subsequent reinstatement.[5]

Appellant disagreed with this decision, and in a June 12, 2000 letter, requested reconsideration through his authorized representative. He submitted additional evidence.

In a December 1, 1999 decision, a Connecticut State employment security appeals referee found that appellant did not "knowingly" violate the employing establishment's vehicle dismount policy, and therefore determined that appellant was terminated from employment for reasons other than willful misconduct. The referee found that the termination was "disproportionate" to the violation appellant committed "in light of [appellant's] 30 years of exemplary service." The referee therefore concluded that the employing establishment was unreasonable in the administration of its zero deviation policy, and awarded appellant state unemployment compensation beginning August 15, 1999.

In a May 5, 2000 decision, the Department of Veterans Affairs granted appellant a "[s]ervice connection for post-traumatic stress disorder … with an evaluation of 50 percent effective August 25, 1999." Appellant's post-traumatic stress disorder was found to be "directly related to military service," with "credible supporting evidence that the claimed in-service stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed in-service stressor." The decision states that appellant's stressors were "related to combat" as an infantryman. The decision notes that appellant had been fired from his postal employment "after 31 years of service for a minor infraction."

By decision dated December 6, 2000, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that the determination of the state unemployment insurance referee was not binding. The Office found that there was no evidence that the employing establishment committed error or abuse in enforcing its zero deviation policy. "The [a]ppeals [r]eferee applied the [s]tate's criteria in determining whether an employee is entitled to unemployment compensation benefits. Those criteria are separate and distinct from the criteria applied by the Office … in deciding whether an injury arose in the performance of duty. As the case before the [MSPB] was settled without a finding as to the reasonableness of the employ[ing establishment's] action there is no proof that the employer acted unreasonably in enforcing its Zero Deviation Policy."

[5] The Office commented that "[c]ertainly on its face the firing of an employee with 31 years of service and a clean disciplinary record raises questions about the wisdom of the employer's action. However, the evidence shows that [appellant] … was in fact notified a month before; the reasons were provided for the termination and [appellant] was offered the opportunity to respond," and "made clear that [appellant] was aware of his action at the time he made it but did not correct himself. … Finally, the [MSPB] found no error or abuse in the employer's actions," and that later modification or rescission of those actions did not in itself establish error or abuse.

On appeal, appellant asserts that the November 25, 1999 MSPB settlement agreement and December 1, 1999 state unemployment insurance decision substantiated that the employing establishment was abusive in enforcing the administrative zero deviation policy, as his termination was later rescinded, and the state appeals referee found the employing establishment acted unreasonably in administering its zero deviation policy.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. Where disability results from an employee's emotional reaction to administrative matters unrelated to the employee's assigned duties or requirements of the employment, the disability is generally regarded as not arising in the course of employment and does not fall within the scope of coverage of the Federal Employees' Compensation Act.[6]

In this case, appellant attributed the claimed emotional condition to being terminated from employment effective August 13, 1999 due to a June 22, 1999 violation of an employing establishment vehicle safety policy. The policy provided that merely being observed violating the procedures was "sufficient to warrant disciplinary action, up to and including removal." The record demonstrates that appellant was well aware of the disciplinary penalty for violating the vehicle dismount safety policy, as he attended June 16 and 17, 1999 meetings about the policy, and reviewed the policy with approximately 20 letter carriers.

However, termination of employment is an administrative, disciplinary matter not covered under the Act, unless it can be established that the employing establishment committed error or abuse.[7] The Board finds that appellant has not established that the employing establishment committed error or abuse in administering his termination from employment.

Appellant asserted that the November 25, 1999 MSPB settlement agreement demonstrated that the employing establishment committed error regarding his termination, as it agreed to suspend appellant in lieu of terminating his employment, and to expunge all evidence of his removal from postal records. However, the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[8]

Appellant also alleged that the December 1, 1999 decision of the Connecticut State employment security appeals referee established error and abuse by the employing

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

[7] *Sharon K. Watkins*, 45 ECAB 290 (1994); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

[8] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993). The Board has held that findings made by the MSPB or Equal Employment Opportunity Commission may constitute substantial evidence relative to the claim to be considered by the Office and the Board. *Jimmy L. Day*, 48 ECAB 654 (1997); *see Donna Faye Cardwell*, 41 ECAB 730 (1990); *Walter Asberry, Jr.*, 36 ECAB 686 (1985). However, in this case, there MSPB did not make specific findings of fact as part of the voluntary settlement agreement.

establishment. The referee found that the termination was "disproportionate" to the violation appellant committed, concluded that the employing establishment was unreasonable in the administration of its zero deviation policy, and awarded appellant state unemployment benefits.

However, the findings of other administrative agencies or courts are not determinative with regard to proceedings under the Act.[9] The state employment security decision is based on the laws, regulations and case precedents of Connecticut State relevant to an applicant's eligibility for state unemployment insurance benefits. These rules are utterly dissimilar from the laws and regulations used by the Office to adjudicate claims under the Federal Employees' Compensation Act, which is concerned only with injuries and conditions arising in the performance of an employee's federal duties.

Appellant also asserted that the May 5, 2000 decision of the Department of Veterans Affairs granted him a 50 percent disability rating for post-traumatic stress disorder established the presence of the claimed emotional condition. However, the decision attributed this disability solely to appellant's service as a combat infantryman. The decision notes that appellant had been fired from his postal employment, but did not attribute his condition to this termination. This decision, therefore, tends to negate appellant's assertion of a causal relationship between an emotional condition and factors of his federal employment.

Consequently, appellant has failed to establish that he sustained an emotional condition in the performance of duty as alleged, as he did not substantiate any compensable factors of employment.[10]

[9] *See Daniel Deparini*, 44 ECAB 657 (1993); *George A. Johnson*, 43 ECAB 712 (1992); *Constance G. Mills*, 40 ECAB 317 (1988).

[10] Appellant submitted January 14, 2000 report from Dr. Marc Rubenstein, an attending Board-certified psychiatrist of professorial rank, outpatient counseling nurses notes dated August 25, 1999 through April 13, 2000, and chart notes August 20 and 23, 1999 However as appellant failed to allege a compensable factor of employment, the medical record need not be addressed. *Margaret S. Krzycki*, 43 ECAB 384 (1992).

The decisions of the Office of Workers' Compensation Programs dated April 17 and December 6, 2000 are hereby affirmed.

Dated, Washington, DC
December 13, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member