U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY TURNER and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

Docket No. 99-1001; Submitted on the Record;
Issued January 17, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, 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.

The Board finds that appellant did not meet his burden of proof to establish 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. 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. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] 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.[2]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors, or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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 of Workers' Compensation Programs, 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.[5] 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.[6]

In April 1997 appellant, then a 34-year-old collection and distribution worker, filed a claim alleging that he sustained an emotional condition due to various incidents and conditions at work.[7] Appellant filed other emotional condition claims in which he alleged that later incidents and conditions at work caused him to sustain an emotional condition. His various emotional condition claims have been consolidated into the present case file. By decisions dated June 18 and August 19, 1997, January 9, July 27 and September 29, 1998, the Office denied appellant's claims on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[8] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[9] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] Appellant initially filed his claim as a traumatic injury claim but later expanded his claim to include incidents alleged to have occurred on multiple dates.

[8] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

or coworkers.[10] Appellant alleged that supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided insufficient corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[11]

In particular, appellant had alleged that on April 28, 1997 a supervisor, Kathy Blakely, called him "crazy" and generally disparaged his mental condition. The record reveals that Ms. Blakely admitted telling appellant that he "needed help" but there is insufficient evidence that this comment referred to appellant's emotional condition or otherwise constituted harassment or discrimination.[12] Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[13] The record reveals that Ms. Blakely made her comment after she became frustrated that appellant seemed unwilling to follow her instructions. Appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[14] Appellant alleged that on May 7, 1998 Ms. Blakely harassed him by unfairly asserting that he had threatened her. However, appellant did not submit any evidence, such as witness statements, to support this assertion.

Appellant also alleged that on May 28, 1998 a coworker, Mark Marascalo, verbally harassed him and used racial epithets during a discussion about labels which were placed in his work area. Appellant did not submit evidence to support this assertion and the record contains statements from Mr. Marascalo and James Miller, a coworker who witnessed the exchange, which indicate that no such harassing comments were made. Appellant claimed that on June 3, 1998 a coworker, William Holmes, harassed him regarding his medical condition. Mr. Holmes admitted that he asked appellant about the nature of his injury but indicated that he did so in a joking manner and that he had no prior knowledge of appellant's mental condition.[15] Appellant has not shown that, under these circumstances, this isolated comment rose to the level of harassment. Appellant also generally alleged that he was "labeled" as "schizophrenic" or a "threat," but he did not adequately articulate this assertion or provide evidence in support thereof.

[10] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[11] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[12] A statement of a coworker also indicates that Ms. Blakely told appellant he "needed help."

[13] *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

[14] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[15] Mr. Holmes indicated that he jokingly asked appellant whether his condition was "leg, hip, ankle, or … mental" and that if it were mental he needed to "get my knife."

Appellant alleged that between the mid 1980s and the mid 1990s the employing establishment subjected him to unfair disciplinary actions, including proposed removal notices; wrongly denied his leave requests; improperly accused him of being a threat to other employees; wrongly refused to accept his medical documentation; and placed him in positions which exceeded his work limitations. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[16] Although the handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[17] However, the Board has also found that an administrative or personnel matter 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.[18] However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters.

The record contains numerous documents concerning grievances and Equal Employment Opportunity claims filed in connection with these administrative matters, but the documents do not indicate that the employing establishment committed error or abuse with respect to these matters. Although some of the disciplinary penalties levied against appellant were later reduced, the dispositions of these matters were made without prejudice to the employing establishment. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[19] Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[20]

[16] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[17] *Id.*

[18] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[19] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[20] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated September 29, July 27 and January 9, 1998 are hereby affirmed.

Dated, Washington, DC
January 17, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member