U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RODGER T. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, TX

Docket No. 99-1788; Submitted on the Record;
Issued March 2, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On November 23, 1997 appellant, then a 44-year-old injury compensation specialist, filed an occupational disease claim, alleging that he sustained stress due to factors of his federal employment. By decision dated February 18, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish an injury in the performance of duty.

In a letter dated March 2, 1998, appellant requested a hearing before an Office hearing representative. By decision dated December 31, 1998, the hearing representative affirmed the Office's February 18, 1998 decision. The hearing representative found that appellant had not established that his supervisor harassed and discriminated against him or abused an administrative function in matters regarding his leave usage and referring him for a fitness-for-duty examination. She found, however, that the employing establishment's attempt to verify appellant's medical status by sending investigators to his physician's office constituted abuse in an administrative function and thus a compensable factor of employment. The hearing representative analyzed the medical evidence and found that it was insufficient to establish that appellant sustained an emotional condition resulting from the compensable factor of employment.

In a letter received by the Office on February 9, 1999, appellant requested reconsideration of his claim. By decision dated February 17, 1999, the Office denied modification of the December 31, 1998 decision.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

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]

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, 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.[3] 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.[4]

In the present case, appellant has alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered factors under the terms of the Act.

Appellant primarily attributed his stress-related condition to harassment and discrimination by his supervisor, Angie Fuentes. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[5] 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.[6] In this case, appellant related that Ms. Fuentes told him that he was stupid and wrote like a ninth grader, asked him if he used drugs, constantly required him to redo work, told coworkers about

[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] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

[4] *Id.*

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

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

his medical condition, reprimanded him for decorating his office, refused to permit him to ask coworkers for assistance, altered his performance evaluation and assigned him tutors who withheld information from him. In support of his contentions, appellant submitted a statement from Larry Washington, a coworker, who related that appellant told him that Ms. Fuentes lied to him, threatened him and placed him on enforced leave.[7] Mr. Washington, however, did not describe any specific instances of harassment and thus his statement is not sufficient to establish that Ms. Fuentes harassed or discriminated against appellant.[8] In response to appellant's allegations, Ms. Fuentes related that she made appellant redo his work because it contained errors. She stated that she would "never have said to him that he was stupid or wrote like a ninth grader. Instead I took on the task of rewriting his work and giving it back to him for typing." Ms. Fuentes further denied asking appellant whether he used drugs, telling coworkers about his medical condition, or altering a performance evaluation. She stated that appellant had been provided with personal tutors for an entire year and had received all the training necessary for his position. Ms. Fuentes further indicated that she asked appellant to remove posters of his three nonfederal jobs from his office because they could be viewed as advertisements. Letters from four of appellant's coworkers dated November 1998 support Ms. Fuentes' contention that she did not belittle or abuse him.

While appellant has alleged that his supervisor engaged in actions which he believed constituted harassment and discrimination, he has provided no corroborating evidence, such as witness statements describing specific incidents, to establish that the statements actually were made or that the actions actually occurred.[9] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.[10]

Appellant further attributed his stress-related condition to receiving an August 3, 1998 proposed letter of warning in lieu of a 14-day suspension from Ms. Fuentes. While the handling of disciplinary actions is generally related to employment, it is an administrative function of the employer and not a duty of the employee.[11] However, the Board has held that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[12] In this case, the record contains no evidence showing that the employing establishment erred in its action. The employing establishment subsequently removed the letter of warning from appellant's file in February 1999;

[7] Mr. Washington also described his perception that management's attitude toward appellant changed before his transfer to Ms. Fuentes' supervision.

[8] *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).

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

[10] Appellant also has not established a factual basis for his contention that his tutors withheld information from him or that Ms. Fuentes altered his performance evaluation.

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

[12] *Id.*

however, the mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.[13]

Appellant also related that Ms. Fuentes wrongly issued him an absence inquiry letter regarding his request for sick leave on November 7 and 9, 1997 and wrongly placed him on enforced leave pending a fitness-for-duty examination. The Board has held that such matters as leave requests and fitness-for-duty examinations are generally not considered compensable factors of employment because they relate to the administrative duties of the employer rather than the regular duties of the employee.[14] An administrative or personnel matter will not be considered a compensable factor of employment unless there is evidence of error or abuse by the employing establishment.[15] In this case, appellant has submitted no evidence of any error or abuse by the employing establishment in requesting medical documentation for leave on November 7 and 9, 1997 or referring him for a fitness-for-duty examination.

In this case, the hearing representative found that appellant had identified a compensable factor of employment with respect to his supervisor sending investigators from the employing establishment to his physician's office to verify his request for sick leave.[16] However, appellant's burden of proof is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[17]

In a report dated December 5, 1997, Dr. Robert B. Mandell, a psychologist, diagnosed an adjustment disorder with mixed emotional states of anxiety and depression and an acute stress disorder. He noted that appellant related stress at work due to conflict with his supervisor and stated, "[i]t appears his employment has been a major contributing factor to his psychological and physical condition." Dr. Mandell's finding that employment "appears" to have contributed to appellant's condition of an adjustment disorder and acute stress disorder is speculative in nature and thus of little probative value.[18] Further, he did not attribute appellant's condition to the employing establishment's investigator verifying his sick leave status, the only compensable factor of employment and thus his opinion is insufficient to meet appellant's burden of proof.

[13] *Id.; Joe E. Hendricks*, 43 ECAB 850 (1992).

[14] *See Frederick D. Richardson*, 45 ECAB 454 (1994).

[15] *Id.*

[16] It appears from the record that, contemporaneous with appellant's absence from employment in November 1997, the police issued a warrant for appellant's arrest for assault on his former spouse.

[17] *See William P. George*, *supra* note 9.

[18] *Wendell D. Harrell*, 49 ECAB 2289 (1998).

In a report dated February 3, 1998, Dr. Mandell opined that appellant was totally disabled but did not address the causation and thus his opinion is not relevant to the issue at hand.[19]

In a report dated November 6, 1998, Dr. Mandell found that "the intensity of [appellant's] stress and his debilitated state, both physically and psychologically, have been significantly impacted by his employment conditions." Dr. Mandell failed to identify specific factors that caused appellant's condition and, therefore, his report is insufficient to meet appellant's burden of proof.

In a report dated February 8, 1999, Dr. Mandell noted that appellant "reported that his supervisor, Ms. Fuentes repeatedly treated him in an abusive manner." He stated, "[i]t appears his employment conditions have been a major contributing factor of his psychological and physical condition" and that, "[w]hile [appellant] has stress in his life outside of his employment, it does not appear to be a significant contributing factor of his emotional or physical health." As discussed above, Dr. Mandell's finding that appellant's employment "appears" to have contributed to his psychological condition is speculative and thus of diminished probative value.[20] Additionally, Dr. Mandell attributed appellant's stress to unsubstantiated harassment rather than the accepted employment factor and did not provide any rationale for his opinion that personal stress did not significantly contribute to appellant's psychological state. To be of probative value, a physician's opinion regarding the cause of an emotional condition must relate the condition to the specific incidents or conditions of employment accepted as factors of employment, must be based on a complete and accurate factual history and must contain adequate medical rationale in support of the conclusions.[21] As appellant has not submitted the necessary medical evidence, which causally relates the accepted factor of employment to his emotional condition, he has not met his burden of proof.[22]

[19] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[20] *Betty M. Regan*, 49 ECAB 496 (1998).

[21] *Mary J. Ruddy*, 49 ECAB 545 (1998).

[22] Appellant submitted new evidence with his appeal, which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may submit this evidence to the Office, together with a request for reconsideration, pursuant to 5 U.S.C. § 8128.

The decisions of the Office of Workers' Compensation Programs dated February 17, 1999 and December 31, 1998 are hereby affirmed.

Dated, Washington, DC
March 2, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member