U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL ABRON and U.S. POSTAL SERVICE,
DOWNTOWN CARRIER FACILITY, Birmingham, AL

Docket No. 00-2762; Submitted on the Record;
Issued September 5, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On November 23, 1999 appellant, then a 50-year-old letter carrier, filed a claim for stress and related illnesses which he attributed to continuous harassment and abuse from the employing establishment's management. In subsequent statements, appellant described various instances to support his claim of harassment. He indicated that he had the only route that the employing establishment rated at over 8 hours with 525 stops. Appellant reported that in July 1999 the route was increased to 609 stops without a change in the delivery time. He noted numerous occasions in which he requested additional help on the route but the requests were denied or reduced. Appellant noted several occasions in which one supervisor stood behind him as he cased mail, one time staying behind him for almost two hours. He stated that, on July 21, 1999, one supervisor instructed him to keep his mailbag full at all times in performing his park and loop deliveries. Appellant contended that this instruction was contrary to employing establishment rules. He also claimed that a supervisor who followed him on the route at one time told him to finger mail between houses. Appellant refused, citing safety concerns, and stated that fingering while walking was a violation of employing establishment rules. When the supervisor repeated his instructions, appellant stopped working and requested sick leave. Appellant stated that, on several occasions, other carriers cased on his route, which he described as a form of harassment and a way for his supervisors to deny that he was harassed. He indicated that he received predisciplinary meetings on several occasions for such matters as insubordination, failure to deliver express mail on time and failure to handle his scanner properly. Appellant stated that, in express mail, employing establishment regulations required that he not deviate from his route and the employing establishment had express mail carriers who were supposed to deliver express mail that had to be delivered by noon. In regard to scanners, appellant noted that he was instructed to carry his scanner at all times but he observed other letter carriers that did not have their scanners. He commented that a letter of removal was prepared for him but was later rescinded. Appellant stated that, on September 11, 1999, he was given an

award for his work. On September 23, 1999 his supervisor gave him an official discussion on the grounds that his job performance was not up to standard. On October 13, 1999 after repeated requests, he was informed that his casing standards exceeded employing establishment requirements. Appellant stated that on November 4, 1999 he received a seven-day suspension for improper conduct and failure to follow instructions. He indicated that the suspension was later reduced to an official discussion. He claimed that on November 13, 1999 he found his time card missing. He contended that the employing establishment was trying to set him up for termination on the grounds that he falsified records.

Appellant indicated that he filed grievances protesting several of these incidents. He stated that, on December 10, 1999, officials at the employing establishment and an Equal Employment Opportunity counselor requested that he drop his complaints in return for the employing establishment dropping a letter of removal. He stated that one of the counselors stated that the counselors knew what management was doing to him. Appellant refused on the grounds that the supervisors had been harassing him for over a year. He related that the counselor assured him that, if he dropped his complaints, he would have no more trouble from the supervisors. The counselor stated that appellant's supervisors would be ordered to sign statements to treat appellant with respect and dignity. Appellant then signed an agreement to drop his complaints.

In a June 23, 2000 decision, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that he had not established that he sustained an emotional condition in the performance of duty as alleged.

The Board finds that the case is not in posture for decision.

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

[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).

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 supervisors. 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 cited numerous instances which he claimed reflected the harassment he received from his supervisors, particularly in predisciplinary meetings, refusals of requests for additional time to deliver mail and one supervisor standing over him as he cased mail. He submitted the statement of a coworker who indicated that she overheard a conversation between two supervisors who indicated that appellant would be "gone" after a confrontation with another supervisor, rather than the supervisor. This statement, however, does not show that the supervisors intended to harass appellant but only speculated on whether he would be fired. Appellant also submitted a copy of an October 25, 1999 letter from a union president to the employing establishment, contending that supervisors at one employing establishment had undertaken a policy of harassing appellant "to the point of disbelief" and offered to share the specifics at a meeting with the employing establishment management. While this letter gives general support to appellant's claim of harassment, it does not contain direct evidence, such as statements of eyewitnesses or coworkers, which described specific incidents or patterns of harassment of appellant. Appellant also described a December 10, 1999 meeting with counselors who conveyed a settlement offer to appellant. He indicated that the counselors informed him that they knew about the treatment he was receiving from his supervisors and stated that the supervisors would be ordered to treat him with dignity and respect. A settlement or a settlement offer, by itself, does not establish harassment or error or abuse by the employing establishment. Appellant did not submit any statements from the counselors or any official finding that he was subjected to harassment at work. Appellant therefore has not established that he was harassed at work.

Appellant claimed that he was denied requests for overtime to deliver his route. Actions on such requests are an administrative matter within the discretion of his supervisors. He did not establish that the refusal of such requests were in error or abusive. Appellant claimed that he was subjected to disciplinary actions, such as predisciplinary meetings, suspensions and a threatening letter of removal. Disciplinary actions, however, are also an administrative function that is not within appellant's assigned duties. A disciplinary action will be considered a compensable employment factor where the action was taken in error or abuse. However, the fact that such actions are subsequently modified or rescinded does not, in and of itself, establish error or abuse on the part of employing establishment.[5]

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

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

[5] *Mary L. Brooks*, 46 ECAB 266 (1994).

Appellant, however, has alleged some factors which would be compensable factors of employment if substantiated. He stated that his route was the only route in the employing establishment that was rated as being over eight hours to deliver before it was increased even further. There is no record of the employing establishment responding to this allegation. Appellant therefore has cited that his assigned duty of delivering mail on such a route as a cause of his emotional condition. He also contended that he was given instructions to keep his mailbag full at all times and to finger mail while walking between houses, which he claimed was a violation of the employing establishment's rules. Again, the employing establishment did not respond to these allegations. If appellant was given incorrect instructions on how to perform his assigned duties, the instructions of his supervisors would be considered an error and in the incidents involving the instructions would be considered compensable factors of employment.

The case must therefore be remanded for further development. On remand, the Office should request the employing establishment's comment on whether appellant was given incorrect instructions in delivering mail. The Office should then prepare a statement of accepted facts, describing the factors of employment considered to be compensable, including appellant's long delivery route, as well as the factors not considered to be compensable and the factors that it finds have not been established as having occurred. The Office should refer appellant, together with the statement and the case record, to an appropriate physician for an examination and opinion on whether appellant's condition is causally related, either in whole or in part, to the compensable factors of employment. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated June 23, 2000 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
September 5, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member