U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER C. HOLLAND and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Greensboro, NC

Docket No. 02-740; Submitted on the Record;
Issued August 16, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the January 22, 2001 decision of the Office is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.[1]

Appellant requested reconsideration on June 12, 2001 and submitted a prearbitration settlement agreement, two form requests for notification of absence and "affidavits" from a supervisor and two coworkers. He argued that his supervisors perjured themselves in submitting statements in his claim.

On September 28, 2001 the Office denied appellant's request on the grounds that the evidence submitted in support was insufficient to modify the previous decision.

The Board finds that the Office properly denied modification of its prior decision denying appellant's claim.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[2] There are situations where an injury or illness

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[1] The hearing representative noted that appellant had filed several claims for job-related stress. He stated that he would adjudicate the claim filed on January 24, 2000 and focus on work incidents occurring between October 27, 1999 and January 21, 2000 that appellant alleged caused his emotional condition. Appellant filed claims on October 4 and 26, 1999, both of which were denied in separate decisions not before the Board on this appeal.

[2] *Samuel Senkow*, 50 ECAB 370, 373 (1999).

has some connection with the employment but nevertheless does not come within the coverage of the Federal Employees' Compensation Act.[3] These injuries occur in the course of the employment but nevertheless are not covered because they are found not to have arisen out of the employment.[4]

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the mental condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[5]

The Board has long held that a claimant's allegations alone are insufficient to establish compensable work factors without probative and reliable evidence corroborating the allegations.[6] The claimant must substantiate such allegations by submitting a detailed description of specific employment factors or incidents that he believes caused or adversely affected his condition.[7] Personal perceptions and feelings alone are not compensable under the Act.[8]

In emotional condition cases, the Office 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 to be factors of employment and may not be considered.[9] Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.[10]

In this case, the Office initially found that appellant had failed to submit evidence supporting his allegations that he was required to work beyond the physical restrictions of his limited-duty position[11] and that he was harassed by his supervisor who issued two letters of

[3] 5 U.S.C. §§ 8101-8193.

[4] *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

[5] *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

[6] *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

[7] *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

[8] *Earl D. Smith*, 48 ECAB 615, 650 (1997).

[9] *Margaret Kryzcki*, 43 ECAB 496, 502 (1992).

[10] *Donald E. Ewals*, 45 ECAB 111, 122 (1993).

[11] On October 3, 1999 appellant accepted a limited-duty position following his on-the-job injury of August 25, 1999, which the Office accepted for a back strain. On October 18, 1999 appellant filed a traumatic injury claim alleging that on that day he bent over to remove a bench vise from a hamper and strained his back.

warning that were untrue. The hearing representative found that appellant had provided no evidence that he was required to work outside his restrictions or that the employing establishment had erred or acted abusively in issuing the letters of warning.

The Board finds that the evidence does not establish any compensable factor of employment. The June 12, 2001 settlement agreement stated that the letters of warning issued on January 20, 2000 would be removed from appellant's personnel record, thus resolving his grievance. The agreement added that the settlement was nonprecedent setting. This document does not state that the employing establishment erred or acted abusively in carrying out its disciplinary actions. In fact it provides no information on the circumstances of the grievance. The mere fact that the letters of warning were removed from appellant's record does not establish error or abuse on the part of the employing establishment.[12]

Appellant argued that the leave requests he submitted did establish that his supervisor lied in stating that she had a disciplinary discussion with him on August 18, 1999. The leave requests are illegible. In any event, they pertain to an incident prior to the filing of the January 24, 2000 claim. Therefore, they fail to establish that the employing establishment erred or acted abusively.

The statements by Mark Williams and Erica Rone-Smith indicated that their supervisors instructed appellant and them to work the mail out of hampers during appellant's limited duty and that he did so. These statements were considered in the prior decision and found to be insufficient to establish that appellant was required to work outside his restrictions.

A May 7, 2001statement by Gregory A. Dowdy recanted his written statements dated September 7 and December 6, 1999 and June 26, 2000 concerning appellant. Mr. Dowdy related that he was compelled by his supervisors to write false statements about appellant in exchange for promotional opportunities and was unaware that these statements would be used to discipline appellant unjustly.

The record contains only Mr. Dowdy's May 7, 2000 letter, which does not provide the content of the statements he wrote about appellant or the circumstances of the alleged coercion by supervisors to make these statements. The May 7, 2000 letter was apparently part of appellant's grievance concerning the letters of warning, which was resolved. Further, Mr. Dowdy's letter is irrelevant to the time frame covered by appellant's January 24, 2000 claim.

Appellant again requested reconsideration and submitted copies of evidence already in the record. He argued that his supervisor, Jerell Gray, submitted false documents regarding his physical restrictions and work instructions.

On January 16, 2002 the Office denied appellant's request on the grounds that he had failed to submit any new evidence or argument. The Office noted that Ms. Gray had refuted

[12] *See Constance I. Galbreath*, 49 ECAB 401, 409 (1998) (finding that removal of disciplinary actions against appellant from her personnel record not establish error or abuse on the part of the employing establishment).

appellant's allegations in a statement dated June 28, 2000, and that argument had been previously addressed.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's claim for merit review.

Section 8128(a) of the Act[13] vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[14]

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[15] The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[16]

Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.[17]

With his request for reconsideration, appellant submitted no new evidence. Therefore, he has not met the subsection (iii) requirement. Appellant argued that the bench vise that was in the hamper violated the employing establishment's safety rules and that his supervisors failed to provide safe working conditions. Appellant submitted copies of sections of a supervisor's safety handbook and the union's contract with the employing establishment. However, these documents and appellant's argument are irrelevant to the issue in this case -- whether appellant met his burden of proof to establish compensable work factors.[18]

Appellant has failed to show that the Office erred in interpreting the law and regulations governing emotional condition claims under the Act. Nor has he advanced any relevant legal argument not previously considered by the Office. Inasmuch as appellant failed to meet any of

[13] 5 U.S.C. §§ 8101-8193.

[14] 5 U.S.C. § 8128(a) ("The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[15] 20 C.F.R. § 10.608(a) (1999).

[16] 20 C.F.R. § 10.606(b)(1)-(2).

[17] 20 C.F.R. § 10.608(b).

[18] *See Eugene L. Turchin*, 48 ECAB 391, 397 (1997) (finding that evidence submitted on reconsideration regarding the occurrence of several industrial accidents was irrelevant to appellant's burden of proof to establish the timely filing of his claim and was therefore insufficient to warrant merit review by the Office).

the three requirements for reopening his claim for merit review, the Office properly denied his reconsideration request.

The January 16, 2002 and September 28, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 16, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member