U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH J. LIEBL and U.S. POSTAL SERVICE, POST OFFICE, Wichita, KS

Docket No. 03-1744; Submitted on the Record;
Issued September 11, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, MICHAEL E. GROOM

The issues are: (1) whether appellant established that he sustained an emotional condition or a bilateral knee condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On June 27, 2002 appellant, then a 52-year-old letter carrier, filed an occupational disease claim alleging that he suffered from acute stress, anxiety disorder and osteoarthritis of the knees as a result of work factors. He identified several incidents at work that he felt caused him stress and anxiety, including that the employing establishment issued unjust disciplinary actions against him and then coerced him into requesting a job reassignment. Appellant stated that he first realized that his condition was caused or aggravated by his employment on May 30, 2002.

In a June 13, 2002 report, Dr. Tana L. Goering, a Board-certified family practitioner, stated that she had first seen appellant in November 2001 for a routine physical examination, at which time he had no physical complaints but described his job as exhaustive. She related that between November 2001 and May 2002, appellant felt pressured by management to request a reassignment from his supervisory position to a lower level position as a letter carrier. Dr. Goering noted that, although appellant had requested a motorized route, he was assigned a walking route and, on May 30, 2002, began to experience some chest pain. She stated that appellant had been under stress in his personal life because his father had suffered a heart attack and had open heart surgery. Dr. Goering noted that objective tests ruled out appellant's chest pain as being cardiac related. She opined that appellant suffered from stress and anxiety as a direct result of the stressors that he experienced at work. Dr. Goering indicated that appellant had a history of back problems, osteoarthritis and knee surgeries, which prevented him from working on a walking carrier route. She opined that appellant's emotional state would not have deteriorated if his work transfer had been handled differently. On prescription forms dated July 10 and June 13, 2002, Dr. Goering indicated that appellant was disabled for work.

In a July 12, 2002 letter, the employing establishment controverted the claim, stating that any corrective actions undertaken to improve appellant's job performance had been for cause.

The employing establishment denied that appellant was pressured into requesting reassignment from a supervisory job to a carrier position. Copies of the following documents were provided: letters of warning dated May 11, April 24 and April 15, 2002; a request for transfer to the carrier craft signed by appellant on May 6, 2002; email messages pertaining to a physical examination and driver training; a July 11, 2002 letter from appellant's supervisor, Ralph Brown, to upper management indicating that there were no mounted delivery routes available to accommodate appellant's reassignment request and that appellant had passed a physical examination; a copy of a settlement agreement to rescind unsatisfactory merit reviews received by appellant for fiscal years 1995 and 1996 and to rescind a letter of warning in lieu of suspension. The record also includes copies of merit performance evaluations, records pertaining to the use of unauthorized overtime, a copy of a Performance Improvement Plan (PIP) dated February 27, 2002 and a letter dated April 15, 2002 pertaining to review of the PIP plan.

In an August 5, 2002 letter, the Office requested that appellant provide any witness statements addressing how he had been coerced into giving up his supervisory position. He responded by letter dated August 29, 2002. Appellant indicated that he had no witness statements and alleged that he would not have requested a transfer from his supervisory position to a carrier position if his supervisor, Mr. Brown, had not reassured him that he would not receive a walking route. Appellant noted that he listed his prior knee surgeries on a form pertaining to his fitness-for-duty examination, although he did not specifically discuss his knee condition with the examining physician since he thought that he would work on a mounted route. In a statement dated September 4, 2002, Mr. Brown replied that appellant received a PIP and letters of warning in an attempt to help him improve his management skills. Mr. Brown denied that appellant was coerced into requesting a transfer to the carrier craft. He stated that he was unaware that appellant's transfer request was contingent on receipt of a mounted route, since appellant seemed most concerned about maintaining his rate of pay.

In a decision dated January 9, 2003, the Office denied the claim on the basis that appellant failed to establish compensable factors of employment. The Office also found that appellant's bilateral knee condition was not causally related to work factors.

In a letter dated May 1, 2003, appellant requested reconsideration, arguing that his emotional condition resulted from being denied an assignment on a mounted route so that he would not have to compromise his knees. In a decision dated May 12, 2003, the Office denied appellant's request for reconsideration.

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition

[1] 5 U.S.C. §§ 8101-8193.

for which compensation is claimed are causally related to the employment injury.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying the employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[4]

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When 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 coverage of the Act.[5] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[6]

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.[7] However, the Board has also held that coverage under the Act may attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment in dealing with the claimant.[8] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[9]

In this case, appellant contends that the actions of his supervisor caused him to suffer from stress and anxiety. He related that, on April 21, 2000, he was assigned to manage a large carrier unit and began to have difficulty, in his job, when Mr. Brown took issue with his job

[2] *Calvin E. King*, 51 ECAB 394 (2000); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Donna Faye Cardwell,* 41 ECAB 730 (1990).

[5] 5 U.S.C. §§ 8101-8193.

[6] *Joel Parker, Sr.,* 43 ECAB 220 (1991).

[7] *See Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

[8] *See Elizabeth Pinero*, 46 ECAB 123 (1994).

[9] *Ruth S. Johnson*, 46 ECAB 237 (1994).

performance. Appellant stated that, on February 27, 2002, he was placed on a PIP even though he felt that he was not deficient in the areas cited by the employing establishment. He alleged that he was improperly issued a letter of warning for failure to implement new programs. Appellant noted that he was unable to implement the new programs because he had been out of the office for three weeks, prior to the issuance of the letter, conducting route reviews. He stated that he felt coerced into signing a request for reassignment to the carrier craft by his station manager on May 6, 2002, as the request was made only two days after his father nearly died of a heart attack and was still in intensive care. Appellant alleged that the employing establishment refused to accommodate his bilateral knee condition and denied his request to work on a motorized and mounted carrier route. He alleged that his supervisor "showed his vengeance" by assigning him to a walking route in North Station even though he was physically unable to carry out the route. Appellant maintains that he experienced financial worries associated with a reassignment pay cut, thereby adding to his stress.

With respect to the PIP plan and letters of warning, the Board concludes that appellant failed to establish a compensable factor of employment. The assessment of an employee's performance is an administrative matter and, thus, not covered by the Act unless the evidence discloses that the employing establishment acted unreasonably or abusively.[10] In this case, there is insufficient evidence to find that appellant's supervisor acted unreasonably or abusively in assigning him to a PIP plan or that the letters of warning were erroneous. Although one letter of warning was later rescinded by the employing establishment, in accordance with a settlement agreement, the fact that the personnel action was dismissed does not establish, in and of itself, that the employing establishment acted in error.[11] The settlement agreement specified that it had been reached without an admission of guilt or fault by the parties involved.

Furthermore, there is no evidence to establish that appellant's supervisor, Mr. Brown, "vengefully" denied appellant's request for a transfer to a mounted route and then assigned him to a walking route that was beyond his physical capabilities. Mr. Brown explained that it was appellant's decision to request a transfer to the carrier craft and that the main concern at the time was to try to maintain his rate of pay. He noted, however, that there were no available mounted routes in which appellant could work, so he was assigned a walking route. The Board notes that there is no evidence of record establishing that the employing establishment erred or was abusive in the assignment of appellant's job duties. Although appellant was not assigned a mounted route, his frustration over not being able to secure a transfer or reassignment to a particular position is not a compensable factor. Denials by the employing establishment of a request for a promotion or a job transfer do not pertain to an employee's ability to perform his or her regular or specifically assigned duties, but rather constitute a desire of the employee to work in a different position.[12]

The Board does not find evidence substantiating appellant's contention that he was coerced into requesting a reassignment. The reassignment followed the PIP at work although,

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[10] *See Sherry L. McFall*, 51 ECAB 436 (2000).

[11] *See Id.*; *Garry M Carlo*, 47 ECAB 299 (1996).

[12] *Anna C. Leanza*, 48 ECQB 115 (1996).

appellant's transfer request came at a time of a family health crisis, there is no indication that the employing establishment acted abusively in issuing the PIP or that improvement plan was issued in order to take appellant from of his position as a supervisor. Moreover, any financial pressures that he experienced, as a result of his transfer are not compensable under the Act.[13] His reaction to a salary change does not pertain to his regularly or specifically assigned duties and are considered self-generated.

Since none of the alleged employment factors identified by appellant are found compensable, a review of the medical evidence relevant to the emotional condition claim is not warranted.

Appellant has alleged that his bilateral knee condition is work related and submitted a medical report from Dr. Goering dated June 13, 2002. Dr. Goering noted a history of preexisting knee problems including osteoarthritis and knee surgeries, but she did not offer an opinion as to the etiology of appellant's knee problems. She also did not provide an opinion as to how appellant's work duties, as a walking carrier, caused or aggravated his preexisting knee condition. The Board finds that the medical evidence does not establish a causal relationship between appellant's bilateral knee condition and factors of his federal employment. Appellant has failed to meet his burden of proof in establishing his claim for compensation.[14]

The Board finds that the Office properly denied appellant's reconsideration request.

Section 8128(a) of the Act[15] vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[16] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain a review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[17] When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[18] Evidence that does not address the

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[13] *See George C. McCardle,* Docket No. 93-925 (issued July 14, 1994).

[14] In an occupational disease claim, a claimant must provide medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Solomen Polen*, 51 ECAB 341 (2000).

[15] 5 U.S.C. § 8101 *et seq*; *see* 5 U.S.C. § 8128(a).

[16] *See Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[17] 20 C.F.R. § 10.606(b)(2) (1999).

[18] *See Edward W. Malaniak*, 51 ECAB 482 (2000).

particular issue involved also does not constitute a basis for reopening a case.[19] Section 10.608(b) of the regulations states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(1) shall be denied by the Office without a review of the merits of the claim.[20]

In his request for reconsideration, appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office. He also did not submit any new and pertinent evidence in support of his claim, which had not been previously considered by the Office. The copy of the January 9, 2003 Office decision is not relevant to establish appellant's entitlement to compensation. Moreover, the June 13, 2002 report from Dr. Goering was already of record at the time appellant requested reconsideration and had been considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already of record does not constitute a basis for reopening a case.[21] Because appellant did not satisfy the requirements of section 10.606(b)(2) of the regulations, the Board finds that the Office did not err in denying appellant's reconsideration request under section 8128(a).

The decisions of the Office of Workers' Compensation Programs dated May 12 and January 9, 2003 are hereby affirmed.

Dated, Washington, DC
September 11, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[19] *Kevin M. Fatzer*, 51 ECAB 407 (2000); *Edward W. Malaniak, supra* note 18.

[20] 20 C.F.R. § 10.608(b).

[21] *See David J. McDonald,* 50 ECAB 185 (1998).