

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT H. NARCIZA and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

*Docket No. 03-1845; Submitted on the Record;
Issued September 16, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

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

On June 21, 2001 appellant, then a 51-year-old letter carrier, filed a notice of occupational disease alleging that he suffered from a psychiatric condition as a result of factors of his federal employment. In a statement received on June 28, 2001, appellant described the events and circumstances to which he was attributing his emotional condition. He related that he underwent neck surgery on December 5, 2000 and returned to work on March 20, 2001. He alleged that, when he returned to work, his supervisor, Scott McCready, ignored his work restrictions and harassed him daily with criticisms regarding his job performance. Appellant related that he sustained a cervical strain on April 14, 2001 while loading his postal vehicle. He alleged, however, that, when he reported the injury on April 14, 2001 to his supervisor, he was denied immediate medical treatment and subjected to an interrogation that included another postal manager, Robert Ferricane. Appellant accused Mr. McCready and Mr. Ferricane of verbal abuse, noting that he was called a liar and a faker. Appellant submitted several documents pertaining to an Equal Employment Opportunity (EEO) complaint he filed in response to the alleged events of April 14, 2001.

The employing establishment controverted appellant's claim and submitted statements from Mr. McCready and Mr. Ferricane, both of whom denied that appellant was asked to exceed his limitations when he returned to work following neck surgery. Mr. McCready noted that appellant was given daily assistance in carrying out his work duties. They also disputed appellant's account of the events of April 14, 2001, denying that he had been subjected to name-calling or that he was denied medical attention. Mr. McCready maintained that appellant had been angry with him on the morning of April 14, 2001 because he had given appellant an unacceptable performance rating based on a quality control test of appellant's "CFS mail" which showed an unacceptable error rate. He further noted that appellant had been denied his request for more than two hours of street assistance on April 14, 2001 to complete his job assignment for that day. Mr. McCready related that appellant came to him on April 14, 2001 complaining

that he hurt his arm while loading a postal vehicle. He indicated that appellant was vague in his description of how the injury occurred so he had to question him about the details of the alleged injury in accordance with normal injury reporting procedures. He stated that he asked appellant several times if he needed an ambulance but appellant did not want one. Mr. Ferricane verified that appellant was offered an ambulance but that he agreed to proceed with the necessary paperwork before he left for the hospital. He noted that appellant told him that the injury occurred because he had been working outside his work restrictions. Mr. Ferricane stated that appellant had not previously complained to him that his work assignment was outside of his limitations until April 14, 2001.

In a decision dated July 10, 2002, the Office of Workers' Compensation Programs denied compensation on the grounds that appellant failed to allege a compensable factor of employment and therefore was unable to establish that he sustained an emotional condition in the performance of duty. In a letter received by the Office on July 29, 2002, appellant requested an oral hearing. In a decision dated May 16, 2003, an Office hearing representative affirmed the Office's July 10, 2002 decision.

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

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 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.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.²

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 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 Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ 5 U.S.C. §§ 8101-8193.

not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

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.⁵ However the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷

The Board has carefully reviewed the record and finds no factual support for appellant's allegation that he was given work assignments outside of his physical capabilities. Although appellant may have received some criticism of his job performance, he has failed to demonstrate error or abuse on behalf of Mr. McCready in carrying out his supervisory duties. Appellant has not shown that Mr. McCready acted unreasonably in conducting a quality control test on April 14, 2001 or in denying appellant's request for additional job assistance. Appellant's dissatisfaction with his work environment and his desire to hold a different job assignment are not compensable factors of employment.⁸

With respect to the allegations of verbal abuse on April 14, 2001, appellant likewise has failed to provide any factual evidence to show that his version of the events occurred as alleged. There are no witnesses with regard to the conversation held between appellant, Mr. McCready and Mr. Ferricane on April 14, 2001. Both Mr. McCready and Mr. Ferricane specifically deny any verbal abuse and they stated that appellant received timely medical attention for his neck injury. Although appellant has filed an EEO complaint on this matter, no decision has been reached to substantiate appellant's allegations of error and abuse. Because appellant's claim for an emotional condition revolves around actions by Mr. McCready and Mr. Ferricane that were taken in an administrative capacity and there is no evidence of error or abuse by the employing establishment, the Board concludes that appellant has failed to allege a compensable factor of employment. Consequently, the Board finds that the Office properly denied appellant's claim for compensation.

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁵ *See Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ *See Elizabeth Pinero*, 46 ECAB 123 (1994).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ The Board has held the disability sustained by a claimant related to frustration from not being permitted to work in a particular environment or to hold a particular position is not covered under the Act. *Sherry L. McFall*, 51 ECAB 436 (2000).

The decision of the Office of Workers' Compensation Programs dated May 16, 2003 is hereby affirmed.

Dated, Washington, DC
September 16, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member