United States Department of Labor
Employees' Compensation Appeals Board

JOHN J. DANIELS, Appellant	)	
	)	**Docket No. 05-1735**
and	)	**Issued: December 7, 2005**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Naples, FL, Employer	)	

Appearances:
John J. Daniels, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 17, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 8, 2005 which denied modification of a decision denying his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

This is the second appeal in the present case. In a February 3, 2005 decision, the Board affirmed decisions of the Office dated November 17, 2003 and June 9, 2004. The Board determined that appellant failed to establish that he developed an emotional condition in the

performance of duty.[1] The Board found that appellant had not established any compensable employment factors.[2] The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.

On February 25, 2005 appellant filed a request for reconsideration. Appellant submitted a statement from Debbie Abrams, a temporary rural carrier supervisor, dated February 25, 2005. She advised that there had never been a mail count where 1 mail route was counted out of an office of 25 mail routes. Appellant was not present on the day of the September 2002 mail count but was informed that Frank Mee counted appellant's mail. Ms. Abrams contended that Mr. Mee arbitrarily excluded 126 accountables. She noted that appellant filed five grievances and was granted relief in all five instances. Ms. Abrams further advised that Mr. Mee began the process of terminating appellant's job prior to the grievances being resolved, banned appellant from the premises and denied him access to a union steward. She worked with appellant for six years as a rural carrier and rural carrier substitute and believed that appellant was singled out for disparaging treatment.

The employing establishment submitted a May 31, 2005 statement from Cindy DeBrino, manager of customer service. She advised that on February 29, 2005 Ms. Abrams was relieved of her supervisory duties. Ms. DeBrino noted that Ms. Abrams was a rural carrier who had been a temporary replacement supervisor since 2003. She noted that she received many complaints from customers and replacement carriers about Ms. Abrams. In a statement dated June 1, 2005, Mr. Mee noted that Ms. Abrams was not a rural supervisor rather she was a letter carrier. He stated that Ms. Abrams was not present for the mail count at issue and disputed her statement that there was never a mail count where 1 route was counted out of 25 routes. Mr. Mee reiterated that local management did not dictate what routes were counted, rather it was determined by the national agreement between the National Rural Letter Carriers Association and postal management and then carried out by the local offices. Appellant's route fell into the category requiring local management to count his route. Mr. Mee advised that the number of people available to assist in the mail count varied according to the number of routes and the mail counters were formally trained and certified to count mail. He advised that appellant's grievance was settled with a 30-day suspension without pay and appellant's access to the employing establishment was restricted during this time. Mr. Mee noted that, since September 11, 2001, any unauthorized personnel had to wear a visitor's badge and make appointments. He advised that Ms. Abrams was not appellant's immediate supervisor, was not involved in the grievances and was not privy to the information in the grievances. Mr. Mee believed Ms. Abrams statement was written in retaliation for being reassigned from a temporary supervisor to a letter carrier. An

[1] Docket No. 04-1728 (issued February 3, 2005).

[2] Appellant submitted a statement and alleged that his supervisors harassed him by subjecting him to a second mail count on September 17, 2002 after a mail count had been performed in February 2002. He also alleged that on October 4, 2002 he was wrongfully investigated regarding the mail count of September 2002. Appellant indicated that his supervisor did not promptly disclose the results of the mail count. He alleged that he was improperly disciplined and provided with a notice of removal on October 22, 2002 and placed on administrative leave. Finally, appellant alleged that, on October 24, 2002, while on administrative leave, he was not permitted on employing establishment property to meet with his union steward.

employing establishment management schedule from September 14 to October 4, 2002 indicated that Ms. Abrams was not working when the mail count at issue was completed.

By letter dated June 20, 2005, appellant indicated that Ms. Abram's statement was accurate. Appellant reiterated his allegation that Mr. Mee arbitrarily removed 126 accountables from his route, failed to disclose the mail count and made a 4-hour change in his route, which automatically qualified him for the special count in September 2002. He contended that Mr. Mee broke employing establishment rules and regulations causing appellant to be disciplined.

In a decision dated August 8, 2005, the Office denied modification of the June 9, 2004 decision on the grounds that the evidence submitted was insufficient to establish that appellant sustained an emotional condition in the performance of duty.

LEGAL PRECEDENT

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.[3] 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.[4]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.[6]

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.[7] If a claimant does implicate a factor of

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.[8]

To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[9] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[10]

ANALYSIS

In connection with the February 25, 2005 reconsideration request, appellant submitted a statement from Ms. Abrams, a temporary supervisor, who noted that there had never been a mail count where 1 mail route was counted out of an office of 25 mail routes. She acknowledged that she was not present on the day of the mail count but contended that Mr. Mee arbitrarily excluded 126 accountables. Ms. Abrams stated that Mr. Mee banned appellant from the property and denied him access to a union steward. She believed appellant was singled out for disparaging treatment. However, appellant's supervisor denied the allegations of harassment and unfair treatment. Mr. Mee, the station manager, noted on June 1, 2005, that local management did not dictate what routes were counted. Rather this was determined by the national agreement between the National Rural Letter Carriers Association and postal management and was then carried out by the local offices. He advised that appellant's route fell into the category requiring local management to count his route. Mr. Mee advised that the number of people available to assist in the mail count varied according to the number of routes and were trained and certified to count mail. The managers denied harassing or singling out appellant for a mail count. General allegations of harassment are not sufficient.[11] In this case, the Board finds that appellant has not submitted sufficient evidence to establish disparate treatment by his supervisor.[12] Although appellant alleged that his manager singled him out for a mail count and engaged in harassment. The evidence submitted is not sufficient to establish his allegations.[13] While Ms. Abrams generally supported appellant's contentions, she was not appellant's supervisor during the period and was not present at the mail count in question. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

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[8] *Id.*

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

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

[11] S*ee Paul Trotman-Hall*, 45 ECAB 229 (1993).

[12] *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).

[13] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

Appellant's other allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,[14] the Board held that 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. The Board noted, however, 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. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment-generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[15]

Appellant alleged that he was denied the opportunity to meet with his union representative on October 24, 2002. The statement from Ms. Abrams indicated that appellant was refused an opportunity to meet with his union steward. However, the record does not substantiate this allegation. Ms. Abrams did not indicate that she was a witness to management's alleged refusal. She was not appellant's supervisor and did not provide any additional details regarding when this alleged refusal took place. Mr. Mee advised that during appellant's 30-day suspension his access to the employing establishment was restricted. He indicated that during the suspension period appellant was considered unauthorized personnel, and that procedures enacted after September 11, 2001 with regard to access to the premises required visitors to wear a visitor's badge and to make appointments. Mr. Mee indicated that at no point was appellant deprived of consulting with his union representative, rather he had to follow certain procedures to gain access to the employing establishment premises. There is no evidence supporting that the employing establishment acted unreasonably in regard to this administrative matter.[16]

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.[17]

[14] *See Thomas D. McEuen, supra* note 4; *Lillian Cutler, supra* note 4.

[15] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[16] *Wanda G. Bailey*, 45 ECAB 835 (1994) (no error or abuse by the employing establishment where the evidence did not establish that the employing establishment erroneously denied appellant's requests for time to attend appropriate union meetings where appellant's supervisor denied appellant's allegations and where there was no other probative evidence supporting appellant's contentions).

[17] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board