

**United States Department of Labor
Employees' Compensation Appeals Board**

F.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 08-282
Issued: July 15, 2008**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 31, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated September 11, 2007 denying benefits for an emotional condition. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

Appellant, a 51-year-old maintenance supervisor, filed a Form CA-2 claim for benefits based on an emotional condition on May 15, 2006.

In a report dated June 22, 2006, Dr. Gary K. Arthur, Board-certified in psychiatry and neurology, stated that appellant's last day of work was May 25, 2006, when his treating

psychologist, Dr. Gerard E. Boutin, Ph.D., removed him from work due to severe anxiety and depression. He stated:

“Since 2004, [appellant] had been experiencing increasing stress at work. His work location and hours were changed several times and an ongoing controversy threatening his job began with continued investigations and the suspension of six employees who worked under him. During all of this time, [appellant] has had increasing anxiety and panic attacks. The panic attacks are always at work and work related. [Appellant’s] general practitioner placed him on the anti-depressant, Celexa and the anti-anxiety agent, Xanax. He has been seeing Dr. Boutin, a psychologist, on a regular basis for the last year related to these matters. Despite active psychotherapy and medication treatment, [appellant’s] condition has increased to the point that he can no longer concentrate or relate to other employees and management in the postal environment.”

* * *

“For well over a year and a half, [appellant] has been suffering from increasing depression and anxiety with panic attacks. These are related to his job and his work environment. The depression and anxiety are beginning to seriously affect [appellant’s] blood pressure and blood sugar problems. He has had rather consistent suicidal equivalent ideation over the last six months.

“Despite treatment with psychotherapy and medication, [appellant] has reached the point where he can no longer do his job safely or consistently. He is unable to keep regular attendance. [Appellant] is unable to relate to both management and fellow employees. He is quite withdrawn socially, at home also.

“With a reasonable degree of medical certainty, [appellant] is totally disabled for his job as maintenance supervisor at [the employing establishment] and, in fact, for any job in the entire environment at [the employing establishment]. From a psychiatric standpoint, his condition has become chronic and worsened, despite treatment. I would expect that [appellant] will continue to be totally disabled for at least the next 12 to 18 months. He will need ongoing therapy which he has agreed to continue.”

Dr. Arthur diagnosed major depressive disorder, single episode, chronic and generalized anxiety disorder with panic attacks.

In a report dated June 22, 2006, Dr. Boutin, in psychology and appellant’s treating psychologist, diagnosed major depressive disorder, recurrent, severe without psychotic features and generalized anxiety disorder. He stated:

“[Appellant] is having suicidal thoughts. His personality testing was valid indicating that he was open and honest in taking the test. [Appellant’s] scores indicate a severe and debilitating anxiety, depression and anger. He is having suicidal and homicidal thoughts. [Appellant’s] self[-]esteem is poor and fluctuates from some positive to extreme negative. His anxiety is affecting his ability to

function socially and he has a great deal of social isolation. [Appellant's] anxiety freezes him and he cannot function. He is experiencing severe obsessive thinking."

* * *

"With reasonable psychological certainty [appellant] is permanently and totally disabled. If he were to return to [the employing establishment] he would be a danger to self and others. [Appellant] is not able to provide useful and efficient service to [the employing establishment]. This was determined through my treatment of [appellant] and his psychological testing. No accommodation has been offered. [Appellant] is emotionally fragile and his depression, anxiety and anger would make him unable to effectively deal with coworkers, supervisors and customers. This would be a very explosive and dangerous situation."

In a statement received by the Office on August 16, 2006, appellant stated:

"On Tour 3, there are three supervisory positions, Electronic Technicians (Ets), Mechanics and Custodians and Building Mechanic, with four managers over them on Tour 2. I was the supervisor of the Ets for Tour 3 since December 2001. In January 2004, I chose to take a new position, Supervisor of Custodians and Building Mechanics for different Scheduled Days Off (SDOs). The new Manager of the Ets ask (sic) me why I was going into retirement. I replied it was only for the SDOs and not for a quieter position. He then asks me to remain supervising the Ets until they got a new supervisor. They let the 204B temporary supervisor remain in position supervising the custodians and building mechanics.

"After 3 weeks, the 204 B was put back to craft. Now I was held accountable for the Ets custodians and building Mechanics doing the job of at least two supervisors. At this time, I was under a lot of stress trying to keep current. I was taking medication to help me with my anxiety. In March 2004, I was responsible to all three managers, giving the service talks to all of tour 3. I was responsible for instruction of every employee and supervisor on tour 3 in Lockout/tag out procedures and all the PEG Training and requirements.

"The manager of the custodians wanted me to review routes on tour 3 and recommend changes to reduce the number of custodians on tour 3. The Ets were given the responsibility of responding to all merlin calls outside the building at the annex (sic) and Customer Plants through calls place (sic) to parts room. I was not allowed to use overtime without the managers ok, or if Tour 1 called it. The Managers and the two supervisors would give orders and projects to one of the Building Maintenance Mechanics without letting me know. This cause (sic) a lot more stress because I had projects and routes set aside for these people. I started taking more medication to survive the night. I was constantly trying to play catch up with these projects, without overtime.

"In July, the Ets were given to the other supervisor who supervised the mechanics. He went (sic) school almost immediately and then he was detailed to

Tour 2 to cover for supervisor shortages. The 204B to replace him had never supervised and he needed me to train him in all his duties. Now I (sic) responsible for training the new supervisor. My stress level was high because I had too many responsibilities and not enough help. I returned to the doctors for more medications and a physical. The Plant had an AFCS certification, which was held when the machines were running on Tour 3. The 204B would not go out to the AFCSs, the manager brought supervisors and Ets from other tours to help with the testing. Now I was responsible for work orders that everyone wrote for the AFCS, this added to work load and stress.

“In October a third supervisor was hired but he stayed on Tour 2 for training and Supervising the maintenance mechanics. In the 3rd week, the other supervisor was brought back and I went (sic) school in Oklahoma and the 204B was brought up to cover my position for a week. When I came back, the other supervisor told me not to use him again because he was more of a bother than he was help. I was not happy with his performance; he stored work sheets and did not turn them in. My manager was upset because of the routes that were not completed, so I had to investigate both custodians and building maintenance for that week and get it corrected. I was now held responsible when not at work. I felt very stressed and I felt that they were giving me all the responsibilities expecting me to fail. I had people retiring and leaving the tour and they still expected everything to be completed.”

The employing establishment controverted appellant’s claim and submitted an August 21, 2006 statement from Ken Kloc, the manager of maintenance operations, who noted that much of appellant’s statement pertained to the period prior to 2005, when he assumed his current position. Mr. Kloc referenced an investigative interview he conducted with his predecessor, Nicholas Papageorge, appellant’s supervisor prior to 2005. He stated:

“[Appellant] was a supervisor, maintenance operations at [the employing establishment] until he was demoted in April 2005, for his performance. At no time did he convey to his manager, [Mr.] Papageorge, any concerns about his mental health. Mr. Papageorge performed several investigative interviews with [appellant] leading up to the disciplinary action. [Appellant] never mentioned any issues of stress to Mr. Papageorge.

“There are approximately 37 employees on tour three with 3 supervisors of [m]aintenance [o]perations. The ideal supervisor ratio for maintenance staffing is twenty to one. Due to retirements, training and leave there are times that three supervisors are not assigned. With that in mind at no time was [appellant] given more than one area of responsibility. [He] stated that during certification, another supervisor was brought to the tour to assist in the added workload. [Appellant] was expected to run the operations of more than one area when another reporting supervisor was off because of his rest days or for training purposes. When [he] was on his days off, another supervisor would cover for [appellant’s] duties. If an incident occurred that required an official action by the reporting supervisor, it would wait for that said supervisor to return from the nonscheduled day off or

training, providing it would not be an untimely action. [Appellant] was given assistance (by his manager) anytime he brought up the need for assistance. Mr. Papageorge was developing acting supervisors (204B's) to share the responsibilities of four three in the absence of the primary supervisors.

“[Appellant] occasionally covered [b]uilding [s]ystems, [b]uilding [s]ervices and [a]utomation. The Tampa [m]aintenance department was set up with three managers, one responsible for each area. As such, [appellant] would be required to report to each one at different times for different issues regarding each area. This scenario was the common practice of all maintenance supervisors. As a supervisor, [appellant] was required to adhere to all instructions from higher level staff. The fact that he was given directions from different managers falls within the scope of his job description.”

By letter dated September 28, 2006, the Office advised appellant that he needed to submit additional information in support of his claim. The Office asked appellant to describe in detail the employment-related conditions or incidents which he believed contributed to his emotional condition and to provide specific descriptions of all practices, incidents, etc., which he believed affected his condition. The Office also asked appellant to clarify and further explain the allegations he made in his August 2006 statement and review the August 21, 2006 rebuttal statement submitted by Mr. Kloc. Appellant did not submit any additional evidence.

By decision dated January 26, 2007, the Office denied appellant's claim on the basis that he failed to establish any compensable factor of employment and thus fact of injury was not established.

On February 14, 2007 appellant requested an oral hearing.

By decision dated August 31, 2007, an Office hearing representative set aside the January 26, 2007 Office decision. The hearing representative found that the Office failed to make findings of fact regarding each of the events or circumstances alleged by appellant. These included the work connected events that were not compensable factors of employment; the work connected events which were not compensable factors of employment and the incidents alleged but not considered factual. The hearing representative remanded the case and instructed the Office to identify the specific events and circumstances alleged by appellant, acknowledge and resolve the conflicts in the evidence and explain its reasons for accepting or not accepting as factual each incident or circumstance alleged.

By decision dated September 11, 2007, the Office denied appellant's claim on the basis that he failed to establish any compensable factor of employment and thus fact of injury was not established.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee

has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

The first issue to be addressed is whether appellant has established factors of employment that contributed to his alleged emotional condition or disability. 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 Federal Employees' Compensation Act.³ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁴

ANALYSIS

The Board finds that appellant has failed to submit sufficient evidence to establish his allegations that management treated him in a discriminatory manner.⁵ Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁶ Appellant alleged that management overburdened him with excessive responsibilities and unreasonable expectations that he did not impose on other supervisors, but failed to submit documentation to prove these allegations. Mr. Kloc denied appellant's allegations that he was unfairly singled out or treated in a discriminatory manner. He stated that Mr. Papageorge, appellant's supervisor, counseled him about his performance prior to his demotion in April 2005. These investigative interviews were part of his managerial functions, as was his decision to demote appellant. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.⁷ Mr. Kloc stated that the maintenance operations division usually had three supervisors assigned to 37 employees and that the ideal ratio for maintenance staffing was twenty to one; however, due to retirements, training and leave there were times when there were fewer than three functioning maintenance supervisors. At these times supervisors (like

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*

⁵ See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

⁶ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

appellant) were expected to assist in managing the operations of more than one area and share responsibilities until another supervisor was fully trained and permanently assigned to that tour, in the absence of a primary supervisor. Mr. Kloc stated that supervisors were expected to cover for each other at such moments and that appellant's manager provided assistance to him whenever he requested it. He advised that appellant was required to report to each manager at different times for different issues pertaining to each area; as a supervisor, he was required to adhere to all instructions from higher level staff. Mr. Kloc asserted that taking orders from different managers fell within appellant's job description.

The Office reviewed all of appellant's allegations of discriminatory treatment and found that they were not substantiated or corroborated. To that end, the Board finds that the Office properly found that the episodes of discrimination cited by appellant did not factually occur as alleged by him, as he failed to provide any corroborating evidence for his allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support his claim for an emotional disability.⁸ For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established. Appellant has not submitted evidence sufficient to establish that management created a discriminatory or hostile workplace environment.

The Board finds that the evidence of record does not establish that the administrative and personnel actions taken by management in this case were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.⁹ Appellant has not presented sufficient evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment.

Appellant alleged that he sustained stress in the performance of his duties as a supervisor due to the additional responsibilities and excessive workload assigned to him by management. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹⁰ However, appellant has submitted insufficient evidence to establish that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving administrative or personnel matters on the part of the employing establishment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹¹ Assignment of a work schedule is an administrative function and not a work factor and is not compensable absent a showing of error or abuse.

⁸ See *Debbie J. Hobbs*, *supra* note 1.

⁹ See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

¹⁰ See *Lillian Cutler*, *supra* note 3.

¹¹ See *Alfred Arts*, *supra* note 9.

As part of the managerial function, a supervisor must assign work. Appellant did not submit any evidence to substantiate that any of his work assignments were in error or were abusive.

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹² Appellant has not submitted sufficient evidence to support his allegations that management imposed an unusually heavy workload and issued unreasonable deadlines. He also has not established that the employing establishment subjected him to unreasonable demands in setting performance guidelines for him. Appellant asserted that he experienced increased stress when he was asked to cover for other divisions which were temporarily in transition and required supervisory assistance, while simultaneously being charged with responsibility for his own division. He alleged that the managers and supervisors would give orders and assign projects to one of the building maintenance mechanics without his knowledge, which created confusion and contradicted projects and routes he has already assigned to these employees. Appellant also asserted that he was required to train the new supervisors in the other divisions, which caused him great stress because he was overburdened and received insufficient assistance for these tasks. However, these complaints were rebutted by Mr. Kloc, who stated that when one of the three maintenance divisions was temporarily without a supervisor, the other maintenance supervisors were expected to assist in managing the operations of that division until another primary supervisor was permanently assigned there; this was part of the job description. He also rebutted appellant by stating that the employing establishment made efforts to assist him whenever he requested help and provided him with sufficient time to complete his work assignments. Appellant has not shown that management's expectations of him were any different from other, similarly situated supervisors at the worksite. Mr. Kloc indicated that appellant was demoted from his supervisory position because of his inability to meet the standards and requirements of the position. Thus, these actions on the part of management did not constitute a factor of employment.

Regarding appellant's allegation that he developed stress due to the uncertainty of his job duties and his insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.¹³ Accordingly, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to these incidents of administrative managerial functions. A reaction to such factors did not constitute an injury arising within the performance of duty; such personnel matters were not compensable factors of employment in the absence of agency error or abuse.

The Board notes that matters pertaining to use of leave and overtime are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.¹⁴

¹² See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹³ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁴ *Elizabeth Pinero*, 46 ECAB 123 (1994).

However, error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administrative or personnel matter, may afford coverage.¹⁵ As appellant has failed to show that these actions demonstrated error or abuse on the part of management, they are not compensable. The Board further finds that management did not commit administrative abuse or error by restricting his use of overtime at the worksite. The Board notes that disciplinary action is an administrative function and therefore any reaction to such is not considered to be in the performance of duty. Appellant failed to demonstrate that management was doing anything more than discharging its supervisory duties or that it engaged in improper conduct which exceeded his administrative responsibilities.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.¹⁶ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁷ A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. Thus, appellant has not established a compensable employment factor under the Act in this respect.

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.¹⁸ The Board will affirm the September 11, 2007 decision denying compensation for an alleged emotional condition.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

¹⁵ *Margreate Lublin*, 44 ECAB 945 (1993).

¹⁶ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

¹⁷ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁸ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 15, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board