United States Department of Labor
Employees' Compensation Appeals Board

N.G., Appellant	)	
and	)	**Docket No. 08-583**
	)	**Issued: July 10, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Dearborn, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2007 appellant filed a timely appeal from a December 6, 2007 decision of the Office of Workers' Compensation Programs, 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 claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that his emotional condition was causally related to a compensable employment factor.

FACTUAL HISTORY

On May 16, 2007 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging that he sustained an emotional condition and aggravation of his hypertension and diabetes beginning May 9, 2007 due to harassment at work regarding his request to use personal leave to attend a doctor's appointment. On May 7, 2007 Tonya Garner, his supervisor, told him that management did not like to grant eight hours of leave for a medical appointment. She asked

if he could work before or after his medical appointment. He did not feel that he had to explain his need for eight hours of leave because it was his "personal business" and indicated that management's request for medical documentation constituted harassment. He alleged that Ms. Garner's actions adversely affected his ability to see his physician, improperly questioned his need for medical treatment and his honesty. Appellant alleged that during the week of April 23, 2007 Mildred Sheffield-Arnett, a supervisor, yelled at him during a telephone conversation regarding his request for leave under the Family Medical Leave Act (FMLA). Appellant alleged that on June 1, 2007 he was at the employing establishment, at the request of his union steward, to sign grievance forms. A supervisor asked why he was in the building and appellant perceived that management felt he was a safety threat.

By letter dated June 13, 2007, the Office requested additional factual and medical evidence, including the names, addresses and telephone numbers of individuals who could corroborate appellant's allegations, additional information regarding his leave requests and a comprehensive medical report explaining how his employment factors contributed to his medical conditions. Appellant responded that Mike Roman, a supervisor, was a witness to the harassment from Ms. Garner on May 7, 2007 but he could provide only Mr. Roman's work address and telephone number.[1] Appellant declined to provide further details in support of his compensation claim, stating that the explanation he submitted with his claim form should be sufficient to establish his claim.

In a May 9, 2007 letter, Ms. Sheffield-Arnett stated that appellant failed to provide medical documentation supporting his request for FMLA leave for April 16 and 19 to 21, 2007 within the 15 days provided. Consequently, she denied his request for FMLA leave because regulations stated that leave is not FMLA protected unless medical documentation is provided. In a May 10, 2007 letter, appellant advised that he had submitted documentation to another supervisor, Ms. Garner, and Ms. Sheffield-Arnett should contact her. The record shows that his absences were later recorded as FMLA absences following a grievance settlement.

In a September 14, 2007 letter, Ms. Garner advised that her unit was understaffed due to vacations, employees on light and limited duty and other factors. Because of the staffing shortage, she questioned appellant's need for an eight-hour doctor's appointment and noted that all employees were asked to schedule medical appointments on their nonscheduled workday, if possible, or an afternoon appointment. Ms. Garner asked him if he could work before or after his appointment. Appellant responded that he would have to ask his physician. Ms. Garner did not understand his explanation and questioned whether he had a scheduled appointment which upset appellant. She later asked him what his physician advised regarding the question of whether he could work part of the day that he had a medical appointment. Ms. Garner stated that she did not harass appellant. She merely tried to determine whether he needed eight hours for his appointment. Ms. Garner explained that it was management policy with all employees to ask about the need for an eight-hour medical appointment and whether the employee could work before or after the appointment.

[1] There is no indication in the record that appellant asked Mr. Roman to provide a statement regarding the May 7, 2007 incident.

Appellant submitted disability certificates and medical notes dated February 24, 2005 through June 21, 2007 which diagnosed panic attacks, anxiety, depressive neurosis, stress, hypertension and diabetes. A treating physician indicated that appellant was disabled from May 8 to July 31, 2007 for treatment of an acute panic attack, stress and depressive neurosis after an argument with a supervisor at work.

By decision dated December 6, 2007, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an emotional condition causally related to a compensable employment factor.

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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] 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.[3]

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[4]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.[5] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[6] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[7] Where the claimant alleges compensable factors of employment, he must substantiate

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Michael Thomas Plante,* 44 ECAB 510 (1993).

[5] *Dennis J. Balogh,* 52 ECAB 232 (2001).

[6] *Margaret S. Krzycki,* 43 ECAB 496 (1992).

[7] *See Charles E. McAndrews,* 55 ECAB 711 (2004).

such allegations with probative and reliable evidence.[8] When the matter asserted is a compensable factor of employment and the evidence of record establish the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[9]

ANALYSIS

Appellant alleged that management's handling of his leave request on May 7, 2007 constituted harassment. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. He must support his allegations with probative and reliable evidence.[10] Appellant alleged that on May 7, 2007 Ms. Garner told him that management did not like to grant eight hours of leave for a medical appointment and requested additional information regarding the appointment. Ms. Garner asked whether appellant could work before or after his appointment. Appellant did not feel that he had to explain his need for leave because it was his "personal business" and indicated that management's request for medical documentation constituted harassment. He alleged that Ms. Garner's actions adversely affected his ability to see his physician and improperly questioned his need for medical treatment and his honesty. Appellant stated that Mr. Roman was a witness to the harassment from Ms. Garner. However, he did not provide a statement from Mr. Roman. The handling of leave requests from employees is an administrative function of supervisors. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.[11] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[12] Ms. Garner advised that her unit was understaffed at the time of appellant's request for eight hours leave to attend a medical appointment. Because of the staffing shortage, she questioned appellant's need for an eight-hour doctor's appointment. Ms. Garner explained that all employees were asked to schedule medical appointments on their nonscheduled workday, if possible, or an afternoon appointment. She asked appellant if he could work any time before or after his appointment. Appellant responded that he would have to ask his physician. Ms. Garner did not understand his explanation and questioned whether he had a scheduled appointment which upset appellant. She stated that she did not harass appellant. Ms. Garner merely tried to determine whether he needed eight hours for his appointment. Appellant failed to establish that Ms. Garner erred or acted abusively in questioning his need for eight hours of leave to attend a medical appointment. Therefore, this allegation regarding an administrative or personnel matter does not constitute a compensable factor of employment. Appellant alleged that management harassed him by not approving his request for FMLA leave. Ms. Sheffield-Arnett explained that appellant failed to provide medical documentation supporting his request for FMLA leave for April 16 and 19 to 21, 2007 within the 15 days provided. Consequently, she

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

[9] *See Charles D. Edwards*, 55 ECAB 258 (2004).

[10] *Cyndia R. Harrill*, 55 ECAB 522 (2004).

[11] *Id.*

[12] *Janice I. Moore*, 53 ECAB 777 (2002).

denied his request for FMLA leave because regulations stated that leave is not FMLA protected unless medical documentation is provided. The record shows that appellant's request for FMLA leave was approved after he filed a grievance. However, the grievance settlement did not contain any finding of error or abuse by management. Appellant has submitted insufficient evidence to establish that management erred or acted abusively in initially denying his FMLA leave request. Therefore, this allegation is not deemed a compensable employment factor. Appellant alleged that on June 1, 2007 he was at the employing establishment to sign grievance forms. A supervisor asked why he was in the building and appellant perceived that management felt he was a safety threat. Monitoring employee activities at the employing establishment premises is an administrative or personnel matter. Appellant has not provided evidence establishing that the supervisor erred or acted abusively in asking why he was at the employing establishment premises on June 1, 2007. He failed to provide sufficient evidence to establish error or abuse in management's handling of this administrative or personnel matter. Therefore, this allegation is not deemed a compensable employment factor. Appellant alleged that during the week of April 23, 2007 Ms. Sheffield-Arnett yelled at him during a telephone conversation regarding his request for leave. However, there is insufficient evidence to establish this allegation as factual. Therefore, it does not constitute a compensable employment factor. Appellant failed to establish any compensable factors of employment. Therefore, the Office properly denied his claim for an emotional condition.[13]

CONCLUSION

The Board finds that appellant failed to establish that his emotional condition was causally related to a compensable factor of employment.

[13] Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Barbara J. Latham,* 53 ECAB 316 (2002); *Garry M. Carlo,* 47 ECAB 299 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 6, 2007 is affirmed.

Issued: July 10, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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