United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 10-342**
	)	**Issued: April 1, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Framingham, MA, Employer	)	

Appearances:
Sheilah F. McCarthy, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2009 appellant, through counsel, filed a timely appeal from a May 20, 2009 decision of the Office of Workers' Compensation Programs denying his emotional condition claim.[1] Pursuant to 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 established that he sustained an emotional condition in the performance of duty on September 5, 2006.

[1] Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of the Office's decision. *See* 20 C.F.R. § 501.3(f)(2). As the Office's decision was issued May 20, 2009, the 180-day computation begins May 21, 2009. One hundred and eighty days from May 21, 2009 was Tuesday, November 17, 2009. Since using November 18, 2009, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of U.S. Postal Service postmark is November 13, 2009 which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

FACTUAL HISTORY

On September 26, 2006 appellant, then a 49-year-old customer service supervisor, filed a traumatic injury claim alleging that on September 5, 2006 he sustained an emotional condition when William Harris, his supervisor, falsely accused him of sexual harassment and threatened him. He stopped work on September 5, 2006.

The employing establishment controverted the claim, noting that it was a female employee in appellant's charge that made an accusation of harassment. It also noted that appellant had a prior history of major depressive disorder. Mr. Harris denied accusing appellant of being guilty of sexual harassment or of threatening him. The employer submitted a September 5, 2006 e-mail from Caroline S. Colarusso, the postmaster of a neighboring station, to Mr. Harris in which she addressed an August 31, 2006 meeting held with appellant, a female letter carrier and Paul M. Chapski, of the local union, regarding alleged harassment by appellant. The letter carrier outlined three issues: that appellant did not respond to her requests for direction; that appellant had told her he understood her postal route due to the fact that he was familiar with two predecessors on the route; and that she could not get a straight answer from appellant. She noted that her two predecessors were male which resulted in her feeling inadequate and she began to cry. At the close of the meeting, Ms. Colarusso recommended that the letter carrier again speak to appellant to resolve the issues.

On September 1, 2006 the parties met again. Prior to the meeting, Ms. Colarusso suggested to appellant that he apologize to the letter carrier for not providing her with a timely response as to her route inquiries. She suggested the apology as the letter carrier had cried and become upset the prior day. During the meeting, the letter carrier reiterated her three concerns in working with appellant. Ms. Colarusso noted that as the letter carrier was on the overtime list, appellant should timely handle her route requests. Appellant responded to the second allegation by saying he had not compared her to the two male predecessors on the route. The letter carrier interrupted him saying that appellant had made such a remark. Appellant asked her how she defined "sexual harassment" and she responded that he had made her feel inadequate because she could not perform the job as had her predecessors who were male. He responded that he did not believe that to constitute sexual harassment. At the conclusion of the meeting, Ms. Colarusso asked him why he did not apologize to the letter carrier and he responded he had done nothing wrong. She stated that she did not observe appellant accepting responsibility for any of the concerns raised and Ms. Colarusso advised the letter carrier that if she was not satisfied, she could pursue her complaints.

In a September 19, 2006 attending physician's report (Form CA-20), Dr. Allan B. Rosansky, a psychiatrist, diagnosed post-traumatic stress disorder and checked "yes" to the question of whether the condition was employment related. Under history of the injury, he reported that appellant had been threatened by his boss on September 5, 2006.

In a statement of record, appellant alleged that on the morning of September 5, 2006 he was accused of sexual harassment and threatened by Mr. Harris, who purportedly told him that he could take a demotion, transfer from the office or be thrown out. He contended that Mr. Harris went outside established practices for investigation of the matter and the policy against violence in the workplace and had a reputation for bullying and intimidation. Appellant

noted a history of having been previously hospitalized in 2003. He stated that his memory was dependent on his level of stress and that he could not recall certain events, which he attributed to the conduct of his supervisor. Appellant contended that the charge of sexual harassment had been manufactured and denied any stress in his private life. He related that at a prior meeting of September 1, 2006 no accusation or mention of sexual harassment was made.

In an October 11, 2006 letter, the Office informed appellant that the evidence of record was insufficient to support his claim. It requested that he submit additional factual and medical evidence.

On November 2, 2006 appellant stated that his injury involved his ability to recall events and his perceptions of what happened during periods of memory loss changed as he learned new things. He related that in making a timeline of what happened on September 5, 2006 there were gaps for which he had no memory. Appellant reiterated that Mr. Harris did not follow proper procedures and stated that he wanted and expected an investigation to address his concerns. He stated that Mr. Harris threatened him a first time without any witness and a second time when accompanied by Roy W. Madden, supervisor of customer service.

In an undated statement, Mr. Madden noted that on September 5, 2006 appellant asked to be accompanied to the postmaster's office where Mr. Harris was located. Mr. Harris acknowledged appellant, and Mr. Madden stated that he was there at appellant's request. When appellant began to speak, Mr. Harris put up his right hand and stated: "You've already had your day in court. Now you have three choices, leave, go back to the craft or I'll throw you out." Mr. Madden and appellant left the office and returned to their desks. Several minutes later, appellant advised Mr. Madden that he could not work under these conditions and left.

On October 19, 2006 Mr. Chapski, President and Chief Steward of the local branch, described the August 31, 2006 meeting between the female letter carrier, appellant and Ms. Colarusso. It was held to resolve an issue between the letter carrier and appellant. Mr. Chapski stated that the meeting resolved the matter and no harassment grievances were filed over the issue and no equal employment opportunity (EEO) complaint was filed. On October 30, 2006 Robert F. Burns, President of a difference local branch, stated that he received an e-mail from appellant on September 5, 2006 alleging a threat and intimidation by Mr. Harris. Appellant stated that Mr. Harris had "convicted" him of sexual harassment and had given him three choices.

In November 7 and 14, 2006 reports, Dr. Rosansky repeated the diagnosis of post-traumatic stress disorder. He advised that appellant was totally disabled from working due to marked anxiety, thought blocking and confusion. Dr. Rosansky attributed appellant's symptoms to threatening behavior by his supervisor on September 5, 2006

By decision dated November 27, 2006, the Office found that the September 5, 2006 meeting between appellant, Mr. Harris and Mr. Madden occurred but the evidence did not support that appellant was verbally or physically threatened by Mr. Harris. It determined that he failed to establish any compensable factors of employment.

In a November 19, 2007 letter, counsel requested reconsideration. He resubmitted Mr. Madden's undated statement and August 27 and 30, 2007 reports from appellant's attending psychologists. Dr. Rosansky stated that he had treated appellant for four years with a history of amnesic disorder due to work stress. The condition was under control with medication and therapy until the September 5, 2006 incident with his supervisor. Dr. Rosansky attributed appellant's psychological decompensation to the threatening behavior of his supervisor.

In a February 21, 2008 decision, the Office denied modification of the November 27, 2006 decision.

On February 19, 2009 appellant requested reconsideration and submitted factual and medical evidence previously considered. He contended that Mr. Harris failed to follow proper employing establishment procedures regarding sexual harassment allegations during the September 5, 2006 meeting. Appellant contended that at the meeting Mr. Harris informed him that he was guilty of sexual harassment and given three options. As a result of the threats by Mr. Harris, his post-traumatic stress disorder was aggravated.

By decision dated May 20, 2009, the Office denied modification of the February 21, 2008 decision denying his claim.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[2] 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.[3] 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.[4] 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.[5]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[6] The Board has held, however, that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[7]

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[2] *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

[3] *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

[4] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[6] *See K.W.*, 59 ECAB 271 (2007); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[7] *See M.D.*, 59 ECAB 211 (2007); *William H. Fortner*, 49 ECAB 324 (1998).

In determining whether the employing establishment personnel have erred or acted abusively, the Board will examine the factual evidence of record to determine whether they acted reasonably.[8]

The Board has held that when working conditions are alleged as factors in causing an emotional 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.[9] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[10] 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.[11]

ANALYSIS

The Board notes that appellant has not alleged any compensable factor relating to the performance of his regular or specially assigned work duties under *Cutler*. Rather, appellant attributed his emotional condition to the September 5, 2006 meeting with Mr. Harris his supervisor. Appellant's counsel contends that Mr. Harris' account was untruthful and that the Office erred in concluding there was insufficient evidence of error or abuse. Appellant contended that he was bullied and threatened by Mr. Harris, who convicted him of sexual harassment and failed to follow appropriate procedures. The Office found that the September 5, 2006 meeting occurred, but that the evidence did not support appellant's contention that he was threatened by Mr. Harris or that he had erred in his treatment of the claimant.

The evidence of record establishes that, prior to the September 5, 2006 meeting with appellant's immediate supervisors, the employing establishment conducted an investigation into complaints by a female subordinate letter carrier against appellant. Ms. Colarusso described a situation in which an accusation of "harassment" had been brought concerning three primary points of contention: that appellant was not responsive to her requests concerning her route; that he had compared her work on the route with that of two predecessor employees who were male, and her complaint that he did not provide her with straight answers to questions. She described meetings of August 31 and September 1, 2006 and her recommendations to both appellant and the letter carrier. It is apparent that at the second meeting, appellant asked the letter carrier how she defined "sexual harassment" and his belief that comparing her work with that of her male predecessors was not sexual harassment. Mr. Chapski, the union representative, provided a brief description of the August 31, 2006 meeting, noting that no harassment grievances were ever filed to the best of his knowledge.

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

[9] *D.L.*, 58 ECAB 217 (2006).

[10] *K.W.*, *supra* note 6; *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

[11] *Robert Breeden*, 57 ECAB 622 (2006).

Appellant contends that Mr. Harris threatened him twice on September 5, 2006. The evidence of record, however, documents only one meeting between him and his immediate supervisor that day. Mr. Madden noted that shortly after the carriers had started work, appellant approached him and requested that he accompany him to the postmaster's office to be a witness to what was going to take place. They went to the office where Mr. Harris acknowledged them. Mr. Madden informed Mr. Harris that appellant had asked him to be a witness. After appellant started to speak, Mr. Harris raised his hand and told him he had "his day in court" and could leave and go back to work, face a possible demotion or "I'll throw you out." The meeting ended.

Appellant alleged that at the meeting Mr. Harris "convicted" him of sexual harassment and threatened him. The Board finds that the evidence from Mr. Madden does not support his contentions. It is well established that verbal altercations or abuse may be compensable when sufficiently detailed and supported by the evidence.[12] The statement of Mr. Madden does not establish that appellant was threatened by Mr. Harris or that the matter of sexual harassment was discussed. While appellant may have been sensitive to the allegation of sexual harassment based on his September 1, 2006 discussion with a subordinate employee; Mr. Madden did not support that sexual harassment was brought into the following discussion between appellant and his supervisor. The reference by Mr. Harris that appellant had "had his day in court" it too obscure a reference to support appellant's contention of being "convicted" by his supervisor or to establish violation of specific procedures related to investigation of such complaints. It is apparent that the matter being investigated was a complaint against appellant by a subordinate female employee. There is no evidence to establish that Mr. Harris was charged with investigating this matter; rather, that appears to be basis for Ms. Colarusso's involvement in the matter.

Appellant stated that Mr. Harris privately told him that he was guilty of sexual harassment at around 7:30 a.m. that day. The record does not support this allegation and it was denied by Mr. Harris. Rather, the statement of Mr. Madden supports that appellant met with Mr. Harris and then left work, approximately by 8:40 a.m. Appellant stated that he had a 30- to 40-minute "gap" in memory concerning the events of the day. The Board notes that the e-mail of Postmaster Colarusso to Mr. Harris advising him of the two meetings with appellant's subordinate employee was not sent until 8:36 a.m. the morning of September 5, 2006. Therefore, at the time appellant met with Mr. Harris, it does not appear that he had knowledge of the "sexual harassment" topic raised by appellant with the subordinate employee on September 1, 2006. Even if he did, the statement of Mr. Madden does not support that Mr. Harris accused appellant of any form of sexual misconduct or harassment towards an employee. Based on the evidence of record, the Board finds that appellant's claim is premised on his perceptions of his meeting with his supervisor and self-generated concerns. The evidence does not establish that Mr. Harris was abusive toward appellant. Advising appellant that he could return to work, face a possible demotion, leave or be compelled to leave does not rise to the level of verbal abuse or error on the part of the supervisor.[13] A claimant's own feelings or perceptions that a form of criticism by or disagreement with a supervisor is unjustified,

[12] *See David C. Lindsey, Jr., supra* note 10. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act. *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[13] *See Joe M. Hagewood*, 56 ECAB 479 (2005); *Cyndia R. Harrill*, 55 ECAB 522 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

inconvenient or embarrassing is self-generated and does not give rise to a compensable disability.[14] On appeal, counsel contends that the Office erred in failing to find error and abuse on the part of Mr. Harris on September 5, 2006. The Board finds that the evidence of record does not support appellant's assertions.

In *Thomas D. McEuen*,[15] the Board held that an employee's emotional reaction to administrative actions or personnel matters are not covered under the Act as they pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. Coverage under the Act may attach if the factual circumstances establish error or abuse by management in dealing with the employee. Absent evidence of such error or abuse, the resulting emotional condition is considered self-generated and not employment related. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[16] Appellant failed to submit sufficient evidence to support error or abuse by Mr. Harris during the September 5, 2006 meeting.

CONCLUSION

The Board finds that appellant did not establish that he sustained an emotional condition causally related to his federal employment on September 5, 2006.

[14] *Michael A. Deas*, 53 ECAB 208 (2001).

[15] *Supra* note 6.

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

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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