United States Department of Labor
Employees' Compensation Appeals Board

JOHN A. SAAVEDRA, Appellant	)	
and	)	**Docket No. 06-391**
	)	**Issued: April 13, 2006**
U.S. POSTAL SERVICE, INFORMATION SYSTEMS, COLUMBIA DISTRICT, Columbia, SC, Employer	)	

Appearances:
John A. Saavedra, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 12, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 14, 2005, which found that he did not sustain an injury in the performance of duty causally related to factors of his federal employment. 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 met his burden of proof to establish that he has a stress-related condition causally related to his federal employment.[1]

[1] It is noted that in his appeal to the Board, appellant states that his claim was not for an emotional condition but for acute hypertension.

FACTUAL HISTORY

On February 26, 2005 appellant, then a 53-year-old telecommunications specialist, submitted a Form CA-2, occupational disease claim, alleging that factors of employment caused elevated blood pressure, hand tremors, shortness of breath and tightness in his chest. He stated that his workload had increased and his repeated requests for help were denied. He had stopped work on February 7, 2005. By letter dated March 9, 2005, the Office informed appellant of the evidence needed to support his claim.

In statements dated February 26 to May 26, 2005, appellant alleged that on October 14, 2004 he requested help from his supervisor, Thomas Brown, information systems manager, but that it was not forthcoming. Mr. Brown made statements which made appellant feel threatened that he would be reassigned. Appellant stated that beginning in November 2004 his workload, which required a lot of long distance travel, had increased because the employing establishment lost contract employees. In December 2004, he began to miss deadlines which led to an adversarial relationship with Mr. Brown, who was rude and disrespectful in person and in written responses to appellant. Appellant complained about the workload at a meeting on February 1, 2005 and that on February 2, 2005 was given a letter of concern by Mr. Brown. He stated that it took 13.5 hours for him to accomplish assigned duties on February 4, 2005 and he was chastised by Mr. Brown for not completing the work in a timely manner. Appellant was not feeling well at the end of the workday and called in sick on Monday, February 7, 2005. He then saw Dr. Michael D. Lawhead, who diagnosed high blood pressure. Appellant stated that for several months he had experienced low appetite, unusual sleep patterns, occasional fine tremors in his hands, some tightness in his chest, occasional shortness of breath, low energy, listlessness and mild headaches and had no other stress other than at work. Appellant alleged that, in the presence of coworkers, Mr. Brown repeatedly questioned him in a sarcastic manner and that there were miscommunications about various job duties. In the fall of 2004, appellant's coworkers falsely accused him of opening their mail and, in December 2004, he had a work problem with Carrie Hunter. Appellant alleged that after he stopped work he was threatened with a demand that he return an employing establishment laptop, keys and a cellular telephone and that his employee identification was deactivated, all of which contributed to his hypertension. Appellant requested a transfer in order that he could return to work in March 2005 and generally alleged that the employing establishment improperly requested medical documentation regarding this issue.

In a February 7, 2005 report, Dr. Michael D. Lawhead, Board-certified in emergency medicine, noted a history that appellant had recent run-ins with his boss and coworkers and reported symptoms, including shortness of breath, low energy, headache and trouble sleeping. Physical examination revealed blood pressure of 133/100. Dr. Lawhead diagnosed elevated blood pressure, multiple somatic complaints and acute situational, work-related anxiety/stress reaction. He recommended that appellant follow-up with his blood pressure, stay off work for one week and try to resolve the work situation. In a February 21, 2005 report, Dr. Darrel G. Shaver, Ph.D., noted that appellant was referred by the employing establishment's Employee Assistance Program. He reported appellant's multiple symptoms, complaints of overwork and deterioration in the ability to communicate with his supervisor who was derogatory, demeaning, intimidating, hostile, vindictive and sarcastic. He advised that appellant experienced work-related stress and that he should be transferred. Dr. William J. Fravel, Jr., Board-certified in

family medicine, provided reports dated February 23 to March 14, 2005 in which he noted appellant's complaints and diagnosed hypertension, tremor and insomnia. He advised that appellant should be transferred to a different job as his medical symptoms "seem directly related to the environment that exists in his current work team." In a disability slip dated March 23, 2005, Dr. Sidney E. Morrison, Board-certified in colon and rectal surgery, advised that appellant could return to work. Dr. Fravel appended reports dated May 31 and June 3, 2005 in which he advised that appellant could return to work at his current position. In an attending physician's report dated June 6, 2005, Dr. Fravel diagnosed hypertension as a physiologic response to a stressful situation. He advised that appellant could return to his regular work on June 3, 2005.

The employing establishment controverted the claim and, in statements dated March 3 and 9, 2005, Mr. Brown countered appellant's contentions. He reported that appellant was provided help from August through December 2004 by Bob Johnson and from November 2004 through January 2005 by Ms. Hunter, who stopped helping appellant when he was verbally abusive towards her. Mr. Brown stated that he had difficulty getting appellant to cooperate with them, noting that he was reluctant to train them or given them accesses to files required to help him. Mr. Johnson and Ms. Hunter completed tasks which appellant had negligently left undone, noting that appellant's workload had increased the least. Appellant was not assigned to some jobs he alleged caused his overwork. Mr. Brown stated that the reason appellant worked 13.5 hours on February 4, 2005 was because he had been assigned to complete the task months previously. He described a number of incidents in which appellant's work was not satisfactory, noting that after appellant stopped work, several hundred telephones were found that appellant should have disconnected and reported as no longer in service.[2]

A letter of concern dated February 1, 2005 was issued to appellant for failure to follow instructions and complete work assigned in September and December 2004. In addition, emails with instructions given to appellant by Mr. Brown, were submitted. Ms. Hunter described work she did for appellant and noted that he used abusive language toward her. Mr. Johnson described his work with appellant. In a letter dated February 28, 2005, the employing establishment requested that, since appellant was on official nonwork status, he should return his assigned laptop. By letter dated March 3, 2005, it requested that he return employing establishment keys. In a letter dated May 18, 2005, the employing establishment requested that appellant submit medical clarification regarding his work status.

By decision dated September 14, 2004, the Office denied the claim on the grounds that appellant failed to establish that he sustained an injury in the performance of duty.

LEGAL PRECEDENT

To establish his claim that he sustained a stress-related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has such a condition; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence

[2] Mr. Brown reported that these telephones cost the employing establishment approximately $5,800.00 a month and also noted that there were at least 20 pages that were no longer in service but that appellant continued to certify for payment.

establishing that the identified compensable employment factors are causally related to his stress-related condition.[3] If a claimant does implicate a factor of 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.[4]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[5] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[6] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[7] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[8]

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.[9] An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.[10]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced, which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[11]

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[3] *Leslie C. Moore*, 52 ECAB 132 (2000).

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

[5] 28 ECAB 125 (1976).

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Robert W. Johns*, 51 ECAB 137 (1999).

[8] *Lillian Cutler*, *supra* note 5.

[9] *Felix Flecha*, 52 ECAB 268 (2001).

[10] *James E. Norris*, 52 ECAB 93 (2000).

[11] *Id.*

ANALYSIS

In this case, appellant has described a number of employment conditions which he believed caused his hypertension and other stress-related conditions. He contended that he was harassed and humiliated by his supervisor Mr. Brown and by his coworkers. A claimant must establish a factual basis for allegations that the claimed stress-related condition was caused by factors of employment.[12] The Board, however, finds that appellant has failed to establish any compensable factors of employment in this case.

Regarding appellant's general contention that he was overworked, the Board has held that overwork may be a compensable factor of employment.[13] As with all allegations, however, overwork must be established on a factual basis by the submission of sufficient factual information to corroborate the claimant's account of events.[14] In this case, Mr. Brown explained that two people had been assigned to assist appellant and appellant submitted nothing to provide corroboration that he was overworked. The Board therefore finds that appellant did not provide sufficient evidence to document the alleged overwork and, consequently, this allegation is not established by the evidence.[15] Likewise, dissatisfaction with the type of work assigned or desire to perform different duties, does not come within coverage of the Act.[16] Thus, any reaction appellant had was frustration from not being permitted to return to work in a particular environment or hold a particular position,[17] must be considered self-generated.[18]

Regarding appellant's contention that he was inappropriately issued a letter of concern, although the handling of disciplinary actions is generally related to employment, it is an administrative function of the employer rather than regular or specially assigned work duties of the employee.[19] There is no evidence in this case that the letter of concern was improperly issued. Mr. Brown provided ample explanation regarding his review of appellant's performance. Appellant therefore failed to establish this as a compensable factor of employment.

Appellant generally alleged that Mr. Brown sarcastically criticized his work performance. The Board has recognized the compensability of verbal abuse in certain circumstances. This, however, does not imply that every statement uttered in the workplace will give rise to compensability.[20] Furthermore, an employee's complaints concerning the manner in which a

[12] *Katherine A. Berg*, 54 ECAB 262 (2002).

[13] *Sherry L. McFall*, 51 ECAB 436 (2000).

[14] *Bobbie D. Daly*, 53 ECAB 691 (2002).

[15] *Id.*

[16] *Katherine A. Berg, supra* note 12.

[17] *See Kim Nguyen*, 53 ECAB 127 (2001).

[18] *See Dennis J. Balogh, supra* note 4.

[19] *James E. Norris, supra* note 10.

[20] *Denise Y. McCollum*, 53 ECAB 647 (2002).

supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage of the Act. This principle recognizes that a supervisor or manager, in general, must be allowed to perform their duties, that employees will at times dislike the actions taken.[21] Mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.[22] In this case, appellant submitted no evidence corroborating specific instances in which Mr. Brown acted inappropriately and the Board finds that the fact that Mr. Brown expressed his opinion regarding appellant's work performance would be considered an appropriate supervisory function and not constitute a compensable factor as appellant did not show how this administrative function rose to the level of verbal abuse or otherwise falls within the coverage of the Act.[23]

The Board further finds that it was reasonable for the employing establishment to deactivate appellant's identification and request that he return an employing establishment laptop, keys and cellular telephone during his absence. There is nothing in the correspondence requesting the return of these items or in the request that appellant submit medical documentation that demonstrates error or abuse on the part of the employing establishment. Appellant therefore did not establish these matters as compensable work factors.[24]

Appellant also contended that he was harassed by Mr. Brown and his coworkers, specifically stating that he was generally spoken to and treated in a derogatory manner. With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[25] As stated above, while verbal abuse can be compensable,[26] a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.[27] Appellant submitted no evidence in this case to substantiate that he was harassed in any way by either Mr. Brown or his coworkers. The Board therefore finds that appellant has not established as factual a basis for his perceptions of discrimination or harassment by the employing establishment as he provided

[21] *Judy L. Kahn*, 53 ECAB 321 (2002).

[22] *Id.*

[23] *See Peter D. Butt, Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

[24] *See Linda J. Edwards-Delgado*, 55 ECAB ____ (Docket No. 03-823, issued March 25, 2004).

[25] *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

[26] *Denise Y. McCollum, supra* note 20.

[27] *Penelope C. Owens*, 54 ECAB 684 (2003).

insufficient probative evidence to establish that harassment and/or discrimination occurred.[28] The Board therefore concludes that appellant did not establish a compensable employment factor with respect to harassment and discrimination.[29] The evidence instead suggests that appellant's feelings were self-generated and thus not compensable under the Act.[30]

Inasmuch as appellant failed to implicate a compensable employment factor, the Office properly denied his claim without addressing the medical evidence of record.[31]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained stress-related hypertension in the performance of duty causally related to his federal employment.[32]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2005 be affirmed.

Issued: April 13, 2006
Washington, DC

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

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

[28] *James E. Norris, supra* note 10.

[29] *See Jamel A. White*, 54 ECAB 224 (2002).

[30] *See Gregorio E. Conde*, 52 ECAB 410 (2001).

[31] *Garry M. Carlo*, 47 ECAB 299 (1996).

[32] The Board notes that appellant submitted medical evidence with his appeal. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).