

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. OBLACK and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

*Docket No. 00-458; Submitted on the Record;
Issued March 20, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On November 2, 1998 appellant, then a 51-year-old letter carrier, filed a claim alleging that on October 29, 1998 he developed an acute stress disorder due to constant harassment and intimidation. His supervisor, Samuel Cortese, controverted the claim but acknowledged a heated verbal encounter with appellant on the morning of October 29, 1998.

Appellant provided details of the October 29, 1998 encounter and also alleged multiple incidents of harassment and intimidation over the years. In support he submitted coworker statements addressing the general working environment.¹

In support of his claim, appellant submitted a November 10, 1998 report from Dr. Gregg G. Chirigos, a Board-certified internist, which indicated that appellant sought treatment on October 29, 1998 for stress due to harassment by his supervisor. He recounted the events of the morning of October 29, 1998 regarding appellant's restroom breaks, noted that appellant and his supervisor had a confrontation "which was explosive in nature and required the intervention" of a union steward to prevent the episode from degenerating into a physical confrontation and indicated that appellant "was quite distraught and anxious after this confrontation and was shaking all over and felt that he could not perform his job." Dr. Chirigos indicated that appellant then sought his care; he diagnosed "[a]nxiety and stress-related disorder with depression secondary to a stressful work environment" and he opined "It is my opinion that [appellant's] stressful work environment was directly responsible for [his] illness."

¹ No specific incidents of harassment or intimidation were identified and corroborated by witnesses as to time, place and circumstance.

By decision dated March 31, 1999, the Office of Workers' Compensation Programs rejected appellant's claim finding that he had failed to establish that his condition was sustained in the performance of duty. The Office specifically found that appellant had failed to implicate any compensable factors of employment in the development of his emotional condition.

By letter dated April 6, 1999, appellant requested a review of the written record.

By letter dated May 21, 1999, the employing establishment denied that appellant was singled out for harassment and claimed that he left the building October 29, 1998 screaming profanities and kicking equipment. The employing establishment noted that appellant and Mr. Cortese had a verbal encounter on October 29, 1998.

By decision dated July 8, 1999, the hearing representative affirmed the March 31, 1999 decision finding that appellant had not established that he sustained an emotional condition in the performance of duty. The hearing representative found that a heated discussion with raised voices did occur on October 29, 1998 but that it was the result of criticism of appellant's performance and error or abuse in that criticism had not been established.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Id.*

employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁶

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 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 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. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

The Board has held that verbal altercations when sufficiently detailed and supported by the evidence, may constitute a compensable factor of employment.¹⁰ However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹¹ Appellant has not submitted sufficient evidence that a verbal altercation occurred as alleged. He alleged that he had a heated discussion with his supervisor regarding his performance on October 29, 1998. The Board finds that the evidence of record does not establish this discussion

⁴ *Donna Faye Cardwell*, supra note 2, see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ See *Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁷ See *Barbara Bush*, 38 ECAB 710 (1987).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁰ *Gary M. Carlo*, 47 ECAB 299 (1996).

¹¹ *Harriet J. Landry*, 47 ECAB 543 (1996).

rose to the level of harassment. Generally reactions to discussions regarding performance appraisals are not compensable factors of employment, absent evidence of error or abuse, which has not been substantiated in this case.¹²

In this case appellant's supervisor, Mr. Cortese, acknowledged to having raised voices with appellant on the morning of October 29, 1998. There is no statement from any witness pertaining to this incident. In a June 2, 1999 statement, appellant alleged that his supervisor met him outside the restroom on October 29, 1998 and yelled "get your ass in the office, I [ha]ve had enough of this shit." However, in appellant's previous statement to the Office, he related that the supervisor had yelled "that [is] it, get into the [o]ffice." Mr. Cortese advised that, after questioning appellant regarding his whereabouts, he directed appellant to go to his office and that they would have a discussion. The evidence of record does not establish error on the part of Mr. Cortese in directing appellant to his office or harassment of appellant. Accordingly, appellant has not established a compensable factor of employment pertaining to the October 29, 1998 incident.

Consequently, the decisions of the Office of Workers' Compensation Programs dated July 8 and March 31, 1999 are hereby affirmed.

Dated, Washington, DC
March 20, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹² See *Barbara E. Hamm*, 45 ECAB 843 (1994).