United States Department of Labor
Employees' Compensation Appeals Board

RICHARD J. GHIOZZI, Appellant	)	
and	)	**Docket No. 03-290**
	)	**Issued: February 10, 2004**
U.S. POSTAL SERVICE, Dorchester, MA, Employer	)	

Appearances:
Richard Ghiozzi, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 12, 2002 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated February 13 and June 24, 2002. 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 has established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 8, 2001 appellant, then a 45-year-old mail processor, filed an occupational disease claim alleging that he sustained stress causally related to factors of his federal employment. On the reverse side of the claim form, appellant's supervisor, Tammy Quinlan, indicated that appellant stopped work on June 14, 2001 and returned to work at another location.

In an August 7, 2001 statement accompanying appellant's claim, Ms. Quinlan noted that on March 16, 2001 appellant received notification that his position in Chelsea was being

abolished. She related that appellant "had the opportunity to bid over 300 jobs, but chose to bid only 7." Ms. Quinlan noted that, as appellant did not secure a bid before June 2, 2001, he was reassigned to a work location in Dorchester.[1] Ms. Quinlan indicated that appellant worked at Dorchester from June 4 to 14, 2001, during which time he did not follow instructions and was "confrontational and noncompliant."[2]

In response to the Office's request for additional information, appellant submitted a statement received by the Office on August 31, 2001. Appellant noted that he had previously filed a claim for stress, which was accepted.[3] Appellant related that management at the employing establishment continued to harass him. He stated that all of the night shift workers in Chelsea, including himself, were told that they were losing their jobs and would be reassigned geographically. Appellant indicated that he was not reassigned where he believed he would be but instead to Dorchester. Appellant related that at Dorchester he "was treated like a [second] class citizen" and told to go home and not come back. Appellant noted that he was returning to work at another location.

In a statement received by the Office on August 31, 2001 Christopher Law, a coworker, indicated that he was walking with Linda Garside on June 13, 2001. Mr. Law stated:

> "At that time we overheard a heated discussion between [appellant] and [s]upervisor Vanessa Russell. Superv[isor] Russell had been riding him all morning and the situation came to a boil. This altercation was totally orchestrated by [s]up[ervisor] Russell. [Appellant] stated that he was stressed out from this abuse. [Ms.] Russell responded in her usual ignorant and arrogant manner. She told him to "*get lost*," "*go home*" and "*do [not] come back*."

In a statement received September 10, 2001, appellant related that on June 13, 2001 his supervisor, Ms. Russell, requested that he retrieve letters dropped by a mail carrier. Appellant stated:

> "I then asked [s]upervisor Vanessa why she did not pick up the letters. Her response was that she is a supervisor. I then told her never to treat me as a second-class citizen and further that she should have picked up the letters or asked the letter [] carrier that dropped them to pick them up. She then told me to go to her office. She started yelling that I was no longer in Chelsea and that you do everything that we tell you here."

[1] Ms. Quinlan indicated that appellant was reassigned to a night position, which was also his schedule prior to the reassignment but that he "was being accommodated on a daytime schedule…."

[2] Also accompanying appellant's claim is a letter dated June 13, 2001, from Vanessa Russell to appellant requesting documentation for his Family and Medical Leave Act request.

[3] The record indicates that on February 8, 2001 the Office accepted appellant's claim for a panic attack in reaction to stress, assigned File Number A01-0375196.

Appellant related that he began to feel dizzy, which was similar to the way he felt when he filed his previous accepted claim. He stated that Ms. Russell then yelled at him to "get lost" to "go home" and to never come back.

In another statement received by the Office on September 10, 2001 Ms. Russell related that on June 13, 2001 she asked appellant to pass out "marriage mail." Ms. Russell stated:

> "[Appellant] yelled across the workroom floor to Chris Law that I was making them do mail handlers work. He wanted to know why it was not done the previous day. He started yelling down the aisle to Chris saying 'oh, they have no one to pass it around, so they think we are going to do it.' He then got in my face pointing his finger saying 'do [not] ever ask me to pick up mail that has spilled for a [letter] carrier again.' I told him to go into the office so that we could continue to discuss the situation."

Ms. Russell stated that once in the office she told appellant that she spoke with him respectfully and would also like to be addressed respectfully. She related that he again questioned her assignment of work and she again told him not to speak disrespectfully. Ms. Russell related that appellant then stated that he would leave and that she informed him that if he left "not to come back unless he had documentation/evidence for leaving."

In a statement dated September 17, 2001, the employing establishment controverted appellant's claim and discussed his history of receiving disciplinary action.

By decision dated February 13, 2002, the Office denied appellant's claim on the grounds that he had not established an emotional condition in the performance of duty. The Office found that appellant had not alleged a compensable employment factor.[4]

In a letter dated May 7, 2002, appellant requested reconsideration of his claim. By decision dated June 24, 2002, the Office denied modification of its prior merit decision.

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 the employment but nevertheless does not come within the concept or coverage of workers' compensation. 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.[5] On the other hand, the disability is not covered where it results from such factors as an

[4] The Office further noted, regarding appellant's submission of evidence in connection with his prior emotional condition claim, that a second opinion examiner in appellant's prior claim had found that appellant had no further residuals of his emotional condition effective December 13, 2000.

[5] 5 U.S.C. §§ 8101-8193.

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.[6]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[7] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.[8]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a 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. 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.[10]

ANALYSIS

Appellant primarily attributed his emotional condition to verbal abuse by Ms. Russell, a supervisor, on June 13, 2001. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment.[11] In this case, however, the evidence does not establish verbal abuse by Ms. Russell. Appellant related that on June 13, 2001 Ms. Russell asked him to pick up letters dropped by a mail carrier and that he responded that either she or the mail carrier should pick up the letters. Appellant stated that Ms. Russell took him into her office and yelled at him to "get lost," go home" and "[not] come back." Appellant submitted a statement from a coworker, Mr. Law, who related that on June 13, 2001 he heard Ms. Russell, "in her usual ignorant and arrogant manner," tell appellant to "get lost, go home" and "[not] come back." In a statement dated September 10, 2001, Ms. Russell related that on June 13, 2001 she requested that appellant gather "marriage mail." She stated that appellant pointed a finger in her face and told her never to ask him that again. Ms. Russell stated that she told appellant to join her in her office and requested that he speak with her respectfully. Ms. Russell reported that appellant said that he was leaving and she told him not to come back without documentation.

[6] *See Roger Williams*, 52 ECAB 468 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[7] *Claudia L. Yantis*, 48 ECAB 495 (1997).

[8] *Roger Williams, supra* note 6.

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

[10] *Id.*

[11] *Marguerite Toland*, 52 ECAB 294 (2001).

Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[12] While appellant has submitted some evidence that Ms. Russell may have told him to get lost, go home and not come back, he has not supported his allegation that Ms. Russell yelled at him. Further, appellant has not shown how such an isolated comment by Ms. Russell would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[13] Thus, appellant has not established verbal abuse as a compensable employment factor.

Furthermore, it appears that the conversation between Ms. Russell and appellant arose when he disagreed with her request that he pick up mail dropped by a mail carrier. The Board has long held that the assignment of work is an administrative function and is only compensable when there is evidence of error or abuse by the employing establishment.[14] Similarly, an employee's complaints concerning the manner, in which a supervisor performs her duties as a supervisor or the manner, in which a supervisor exercises her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.[15] 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, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[16] Ms. Russell, as a supervisor, has the authority to assign work and appellant has submitted no evidence or error or abuse in her request that he pick up dropped mail. Consequently, appellant's reaction to Ms. Russell's request is self-generated and not a compensable employment factor.

Regarding appellant's allegation that the employing establishment improperly transferred him to a new location, the Board notes that this allegation relates to administrative or personnel matters, unrelated to his regular or specially assigned work duties and thus does not fall within coverage of the Act.[17] Although the handling of transfers are generally related to the employment, it an administrative function of the employer and not a duty of the employee.[18] 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.[19] In

[12] *Christophe Joliceur*, 49 ECAB 553 (1998).

[13] *See, e.g., Alfred Arts*, 45 ECAB 530 (1994) and cases cited therein (finding that the employee's reaction to coworkers comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164 91 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

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

[15] *See Marguerite Toland*, *supra* note 11.

[16] *Id*.

[17] *James E. Norris*, *supra* note 14.

[18] *See Brian H. Derrick*, 51 ECAB 417 (2000).

[19] *Id*.

this case, appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse in transferring his work location. Thus, appellant has not established a compensable employment factor under the Act with respect to an administrative matter.

As appellant failed to establish any compensable factors of employment, the Office properly denied his claim.[20]

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 24 and February 13, 2002 are affirmed.

Issued: February 10, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[20] As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).