

**United States Department of Labor
Employees' Compensation Appeals Board**

RICHARD S. DONOHUE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Salt Lake City, UT, Employer**

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**Docket No. 03-2145
Issued: February 27, 2004**

Appearances:
Richard S. Donohue, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL L. GROOM, Alternate Member

JURISDICTION

On September 3, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated September 24, 2002 and July 28, 2003, which found that he did not sustain an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merit of appellant's claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On February 28, 2002 appellant, then a 48-year-old supervisor of customer service, filed an emotional condition claim alleging that he sustained stress because he was being frequently moved or displaced. Appellant explained that, during the year 2001, he was moved six times and his starting time and days off were changed. He stated that he was expected to be better than others because of his past performance and that he was told he was the only one that could do

certain tasks. Appellant stated that he performed too many hours of overtime and started losing his memory and “getting days confused with others.”

In an attachment, appellant explained that he was promoted to front line carrier supervisor at the EAS-15 level of the Kearns Post Office in February 2000. He asked for a higher level detail whereby an employee would work elsewhere for two or three months then return to his original job. Appellant stated that in April 2001 Ralph Hamilton, the postmaster, and Byron Burnett, the manager of customer services operations, met with him and advised that they would assign him to the West Valley Station where he would be an EAS-16. Appellant stated that the only higher level assignment he had been given was acting manager of South Salt Lake Station, which was the worst station in that city. Appellant stated that his assignment to the Salt Lake City Station was not optional and that he had his schedule moved so many times, he just wanted to have a normal schedule.

Appellant stated that the constant changes in his schedule led to problems with his wife because she did not understand why he did not have time for her. Appellant first noticed his emotional condition on December 7, 2001 when he could not sleep and began experiencing anxiety attacks. Appellant noted a previous emotional condition in 1986. Appellant stated that, because of his abilities as a front line carrier supervisor, he “was taken advantage of” by upper management. Appellant noted that he had done extremely well when assigned on the details. He explained that it was very stressful that he was going to be assigned to the Salt Lake City Station and not know “where or when.”

Appellant noted that he had a total of five assignments: to the Salt Lake City downtown station in February 2001; the Cottonwood Station in March 2001; the West Valley Station in May 2001; the South Lake Station in October 2001 and to the “84103” downtown station in January 2002. In his first assignment, appellant was the downtown station finance supervisor, EAS-16. He stated that it was the worse finance supervisor job because the postal store was under construction and he was responsible for \$250,000.00 in stamp stock revenue. He had another postal store at Crossroads Mall and was the carrier supervisor for 85 carrier routes and the finance supervisor training him had a thyroid problem. Appellant stated that he trained for the position for approximately one month but never assumed the position. Appellant applied for a manager position at the North West Station, but received a call from Mr. Burnett at the downtown station that he did not get an interview.

At the Cottonwood Station in March 2001, appellant was assigned to help with route inspections. On the day he arrived, John Lopez, the other carrier supervisor, went on leave and that Rich Ellis, another supervisor, was out on stress leave. Appellant described the station as an uproar because employees were tired of being treated poorly, had filed multiple grievances, “a lot of discipline” was being given to the employees and information for part of the route inspection was not in the computer. Appellant stated that he had to put information in the computer for 34 routes regarding the line of travel to and from the postal routes, vehicle numbers and whether the driver was authorized to take a lunch break. Appellant noted that the information should have been entered in the computer over a year prior. He had to make maps of all the routes so that the route inspectors would have something to follow. Appellant stated that the Cottonwood manager changed his days off after three weeks. Appellant stated that he would work 12 to 13 hours a day and that the extra work with route inspections, grievances and

morale of the employees was intense. He noted that when the route inspections were finished at the end of April 2001, Mr. Burnett moved him to the West Valley Station.

During appellant's assignment at the West Valley Station in May 2001, he was a financial supervisor. Appellant stated that the lobby of the station was under construction and there were many discrepancies in the finances including hundreds of missing dollars. Appellant requested an audit, which resulted in a list of problems which he had to "abate." It took him five months to straighten out the problems and he experienced constant pressure from management to finish the project. Other work included replacing thousands of old labels on breaker cards, a month to straighten out the "3489" forms and work with carrier supervisors to better manage their carriers. Appellant stated that he covered for the station manager, who was on vacation for 10 days and start time for work changed from 10:00 a.m. to 8:00 a.m. Appellant stated that he worked from 8:00 a.m. to 7:00 p.m. and, when he completed the audit, Mr. Burnett moved him to the South Salt Lake Station.

During the fourth detail in October 2001 at the South Salt Lake Station appellant was acting manager and replaced a manager who was out on sick leave. He noted that the lobby was under construction during the Christmas season, the busiest time of year and the station had three anthrax scares. Appellant had to go to the fire department to pick up the suspect letter in a plastic zip lock bag. In the second scare, a red substance was found in one of the collection boxes in front of the building. In the third scare, a white powdered substance was left in a collection box in front of the South Salt Lake City Post Office. On December 28, 2001 he met with Mr. Burnett and was reassigned to the downtown station.

At the downtown station in January 2002, appellant alleged that the station was "very disorganized" and was the worst performing carrier unit in the city. During the first two weeks, he worked 10 to 14 hours a day and did not have much time before the Olympics came. He had to modify the line of travel for all the postal routes and there were security issues in addition to route inspections. Appellant stated that the station had not been managed well and there was paperwork to complete such as employee medical documentation, which had not been submitted. Appellant alleged that the downtown station manager started harassing him about a week after his arrival by following him into the restroom, coming in early to see if he arrived late to work, stopping him from going to supervisors' meetings and calling his name angrily over the intercom speaker. Appellant stated that his assignments in general were difficult because he did not have the advantage of knowing the employees, their routes or the differing areas.

From January 16, 2001 through February 24, 2002, appellant listed 19 instances where his work hours or his job assignment was changed. On January 4, 2002 he had to work on his day off because a time clock malfunctioned and, although Mr. Burnett stated that he should let the delivery supervisor take care of the problem, appellant alleged that the delivery supervisor did not know how to fix the clock. Appellant also noted that he had to cover for two supervisors who were on vacation. At the end of January 2002, appellant informed Mr. Burnett that he was experiencing stress at the downtown station and wanted to return to the Kearns Station and reduce his workday to eight hours. His request was denied.

In an April 10, 2002 statement, Mr. Burnett noted that appellant's schedule changes began because he did not get the Northwest Station manager position in early 2001. Mr. Burnett

stated that, during discussions with appellant following the Northwest manager selection, they agreed that it would benefit him to have opportunities in finance and as an acting manager of a station. Appellant was moved to the downtown station to obtain finance experience, and Mr. Burnett asked him to go to the Cottonwood Station to help prepare for a route inspection and appellant agreed. He moved appellant to the West Valley Station to receive further finance experience. He stated that appellant appreciated the detail in South Salt Lake as it provided him an opportunity for an upper level assignment and improve his chances for future promotion.

On November 1, 2001 Mr. Burnett had instructed appellant to stay until the last clerk left the building, noting that either appellant or the finance supervisor needed to stay and close with the clerks. Mr. Burnett stated that appellant was asked to work closely with the supervisor of delivery to improve performance. Mr. Burnett told appellant that his requests could be done on different days and "at no time" was appellant expected to work 12-hour days. In response to appellant's statement that he had to cover for two supervisors while they were on vacation, Mr. Burnett noted that appellant chose to cover both positions so he would look better on his detail.

In response to appellant's allegation that on January 4, 2002 he had to work on his day off because a time clock malfunctioned, Mr. Burnett told appellant not to work that day and that the delivery supervisor could fix the clock. Mr. Burnett stated that appellant knew prior to his assignment to the South Salt Lake Station that, after that detail, he would be placed at the downtown station. Mr. Burnett noted that he never received a complaint from appellant and that it was only after two disciplinary actions were taken against appellant, that appellant first alleged stress. He opined that appellant was retaliating for discipline he received. In reference to appellant's statement that his start time was changed at the downtown station, Mr. Burnett stated that he adjusted the start time during the Olympics, so employees would get off work prior to the heavy afternoon Olympic traffic.

In a memorandum dated April 12, 2002, Mr. Hamilton stated that appellant requested development to become a station manager and had asked what he needed to do in order to be promoted. Mr. Hamilton and Mr. Burnett tried to help appellant get the financial experience he needed for a promotion. Mr. Hamilton stated that they received no complaints until appellant received disciplinary measures. Mr. Hamilton stated that appellant received a discipline letter for spreading false and malicious stories about certain individuals. He stated that appellant also lied during an official sexual harassment investigation, for which he received a letter of warning in lieu of a seven-day suspension. Mr. Hamilton stated that, because appellant demonstrated a lack of integrity in the investigation, he could no longer continue as an acting manager. Appellant received a second letter of warning in lieu of a 14-day suspension for lying a second time during an investigation regarding a performance issue. Mr. Hamilton stated that it was only after the two disciplinary measures and having his acting manager detail cancelled, appellant alleged that his developmental job assignments were stressful. He denied that appellant met with him or complained when appellant was moved from the Cottonwood Station and denied appellant's statement that he had referred appellant to the Employee Assistance Program for help. Mr. Hamilton noted that he did recommend counseling to appellant in his first letter of decision. Mr. Hamilton explained that appellant was mandated to go to counseling as a condition of reducing the proposed disciplinary period. Mr. Hamilton agreed that appellant was

moved frequently but for his own benefits and at his request. Appellant's schedule was changed according to the needs of the assignment.

In a memorandum dated April 18, 2002, Mr. Hamilton clarified that he met with appellant on August 30, 2000, May 3, 2001 and January 14, 2002 and with his representative on February 19, 2002. The August 30, 2000 meeting was at appellant's request to discuss upward mobility options. The May 3, 2001 meeting was also at appellant's request, but Mr. Hamilton did not remember the content of the meeting. The January 14, 2002 meeting was to present appellant with a 7-day suspension letter and the February 19, 2002 meeting was to present the 14-day suspension letter.

In a statement dated August 16, 2002, Ray Hulse, the custodian, stated that, during the months of November and December 2001, he observed appellant stay late until 9:00 p.m. three times at the South Lake Station.

In a statement dated August 15, 2002, appellant noted that on December 28, 2001 Mr. Burnett called him into his office and told him he had extended the 60-day manager detail at the South Salt Lake Station because appellant had done a great job. Appellant stated that, after receiving the disciplinary action of January 8, 2002, he filed a complaint contesting his move to the downtown station but nothing was done. Appellant alleged that Mr. Hamilton and Mr. Burentt manipulated him to the downtown station.

By decision dated September 24, 2002, the Office denied appellant's claim, finding that he did not establish that he sustained an injury in the performance of duty.

On October 16, 2002 appellant requested an oral hearing before an Office hearing representative, which was held on May 7, 2003. Appellant emphasized that, shortly after his promotion to the Kearns Post Office, Mr. Hamilton told him that he could be moved at anytime. Appellant stated that he gave up an eight percent pay increase to be close to his home at the Kearns Post Office. He stated that he met with Mr. Hamilton to complain about the reassignments on May 3, 2001. Appellant stated that no other front-line carrier supervisor was moved 6 or more times in 24 months in the Salt Lake City area nor had a front-line supervisor had his schedule changed 19 times in the same period of time. Appellant testified and reiterated his allegations.

By decision dated July 28, 2003, the Office hearing representative affirmed the Office's September 24, 2002 decision.

LEGAL PRECEDENT

To establish that he has sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (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 condition or psychiatric

disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.¹

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.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

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁴ The issue is not whether the claimant has established harassment or discrimination under standards applied the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁵ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁶

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁷ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁸

ANALYSIS

Appellant alleged that the frequent change of job assignments -- five altogether -- within a one-year period from February 2001 through January 2002 caused or contributed to his emotional condition. Appellant was assigned to the downtown station in Salt Lake City in February 2001, the Cottonwood Station in March 2001, the West Valley Station in May 2001,

¹ See *Robert W. Johns*, 51 ECAB 137, 141 (1999).

² 5 U.S.C. §§ 8101-8193.

³ *Clara T. Norga*, 46 ECAB 473, 480 (1995); *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

⁴ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁵ See *Martha L. Cook*, 47 ECAB 226, 231 (1995).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁷ *Clara T. Norga*, *supra* note 3 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

the South Lake Station in October 2001 and to the 84103 downtown station in January 2002. At each station, appellant alleged that there were multiple managerial or responsibilities. For instance, at the Salt Lake City Station the postal store was under construction and he was responsible for \$250,000.00 in stamp stock revenue. At the Cottonwood Station, the employees had filed multiple grievances and, due to poor maintenance of computer records, appellant had to make maps of 34 postal routes. At the West Valley Station, discrepancies in the financial records required an audit to be performed and he had to replace thousands of labels on old breaker cards and cover for a manager who was on vacation. At the South Lake Station the lobby was under construction during the Christmas season and he had to respond to three anthrax scares. At the downtown station, with the occurrence of the Olympics, he had to modify postal routes to accommodate security needs and to resolve problems with employees' not documenting their leave.

The assignment of work is an administrative function and, as a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act. To the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in assigning appellant a work schedule or a particular tour of duty, such administrative action will be considered a compensable factor.⁹ In this case, appellant did not show that management acted unreasonably or abusively in giving him the various details. The evidence from Mr. Hamilton and Mr. Burnett noted that the details were provided to appellant after he was not selected to interview for a manager position. The details were made in response to appellant's stated objective to obtain more experience in finance and management. However, to the extent that appellant had to perform work and address with different work problems at the various postal stations, that was part of the regular and specially assigned duties of his job and constitutes a compensable factor of employment.¹⁰ Appellant stated that his assignments in general were difficult because he did not have the advantage of knowing the employees, their routes, or the different areas. Appellant detailed his job assignments dealing with finances matters, maintenance of computer records, three anthrax scares and covering for supervisors who went on vacations. Management did not dispute that appellant was assigned to these job duties in his various assignment or description of this major responsibilities at these stations. Mr. Hamilton agreed that appellant was moved frequently to provide work experience for future promotion consideration.

Appellant alleged that, to alleviate the problems at the different stations, he had to work 12 to 13 hours a day at the Cottonwood Station, 11 hours a day at the West Valley Station and at the downtown station he worked 10 to 14 hours a day. Mr. Hamilton stated that most supervisors and managers worked more than eight hours on a frequent basis and that it was the nature of the job. Mr. Burnett noted that appellant was not required to work 12-hour plus days. The custodian's statement corroborate that appellant worked until 9:00 p.m. three times at the South Lake Station. Overwork maybe be a compensable factor of employment but must be established on a factual basis.¹¹ In this case, the postmaster noted that most supervisors and

⁹ *Ernest St. Pierre*, 51 ECAB 623, 625 (2000); *Robert W. Johns*, 51 ECAB 137, 142 (1999).

¹⁰ *Ernest St. Pierre*, *supra* note 9 at 625-36 (2000); *see Cutler*, *supra* note 3.

¹¹ *Robert Bartlett*, 51 ECAB 664, 666 (2000); *Sherry L. McFall*, 51 ECAB 436, 439 (2000).

managers worked more than eight hours frequently and this is corroborated by the evidence of report. Regardless of whether appellant volunteered to do the overtime work, the record supports that appellant worked overtime when necessary to perform his job.¹² Appellant has, therefore, established that working overtime constituted a compensable factor of employment.

Appellant contended that there were approximately 19 instances where either the days he worked were changed or the starting and ending times or the workday or both. Mr. Hamilton stated that the schedule changed according to the needs of the assignment as it did for any supervisor or manager. Mr. Burnett stated that he adjusted the start time of the workday during the Olympics so the employees would get off work prior to the heavy afternoon Olympic traffic. The Board has held that a change in work shift may constitute a compensable factor.¹³ The frequent time and day shifts appellant underwent could constitute a compensable factor of employment; however, the only change noted was the start time at the downtown station where Mr. Burnett adjusted the start time to employees during the Olympics. No documents of record support appellant's allegation that he underwent numerous changes in work shift. Thus, appellant has not shown his schedule changed as alleged. He has, therefore, not established a compensable factor of employment in this regard.

Regarding appellant's contention that he had to come in on his day off to fix the time clock, matters of leave are administrative actions and as such are generally not considered compensable factors of employment unless the employment establishment acted unreasonably or abusively.¹⁴ Mr. Burnett stated that he told appellant that the supervisor on duty that day could fix the clock and that appellant should stay home. Appellant alleged the supervisor did not know how to fix the clock. Mr. Burnett's statement, however, does not establish that management acted unreasonably or abusively. Appellant has not established a compensable factor of employment as there was no requirement that he report to work or fix the clock.

Regarding appellant's contention that Mr. Burnett refused appellant representation on December 28, 2001 and at a meeting in January 2002, appellant has not presented sufficient evidence to support his allegations. His representation during any disciplinary meetings constitutes an administrative action. It is, therefore, compensable only if appellant establishes management acted abusively or unreasonably.¹⁵ Appellant has not made this showing.

Appellant alleged that Pete Lopez, a supervisor, harassed him by changing his starting times and by moving his office furniture and paperwork. Appellant has not submitted evidence to support Pete Lopez performed these actions. Absent the requisite corroborating evidence, appellant has not established harassment.¹⁶

¹² See *Donna J. DiBernardo*, 47 ECAB 700, 704, 797-98 (1996); *Ezra D. Long*, 46 ECAB 791, 797-98 (1995).

¹³ *Virginia Dorsett*, 50 ECAB 478, 481 (1999); *Dodge Osborne*, 44 ECAB 849, 857-58 (1993).

¹⁴ See *James P. Guinan*, 51 ECAB 604, 609-10 (2000); *Margrethe Lublin*, 44 ECAB 945, 956 (1993).

¹⁵ See *Robert W. Johns*, 51 ECAB 137, 144 (1999).

¹⁶ See *Denis M. Dupor*, 51 ECAB 482, 486-87 (2000).

Regarding appellant's contention that a manager harassed him in January 2002 at the downtown office by folding his arms, watching and followed appellant. However, appellant did not describe the date and time these incidents occurred or present evidence to establish or alleged that they occurred. Even so, the Board has held that monitoring an employee is an administrative action and is not compensable unless the employee establishes showed that management error or abuse. Appellant has not made this showing.¹⁷

Appellant established two compensable factors of employment regarding the regular and specially assigned job duties and overtime work required by the various details. However, appellant's burden of proof is not discharged by the fact that he has establish employment factors which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the compensable employment factors.¹⁸ Since the Office did not address the medical evidence the case will be remanded for further development

CONCLUSION

The Board finds that appellant established two compensable factors pertaining to his regular and specially assigned job duties and overtime work as required by the job assignments to the five postal stations. The case must, therefore, be remanded for the Office to address the medical evidence and determine whether it establishes that the appellant's emotional condition is causally related to the compensable factors of employment. After any further development it deems necessary, the Office should issue a decision on appellant's claim.

¹⁷ See *Brian H. Derrick*, 51 ECAB 417, 421-22 (2000).

¹⁸ *Clara T. Norga*, *supra* note 3 at 482, 483; see *William P. George*, 43 ECAB 1159 (1992).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2003 and September 24, 2002 decisions of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision.

Issued: February 27, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member