

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

KENNETH E. HARRIS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pine Bluff, AR, Employer**

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**Docket No. 04-102
Issued: February 18, 2004**

Appearances:
Jesse L. Kearney, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

Appellant filed an appeal on October 16, 2003 of a July 18, 2003 decision of the Office of Workers' Compensation Programs denying modification of previous decisions finding that appellant had not established that he sustained an emotional condition in the performance of duty. 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 on appeal is whether appellant has established that he sustained depression and anxiety with consequential peptic ulcer disease in the performance of duty. On appeal, appellant asserts that witness statements, findings of a threat assessment team, and the Office's August 23, 2000 finding of harassment were sufficient to establish his allegations of harassment and meet his burden of proof.

FACTUAL HISTORY

This is the second appeal in this case. By decision dated March 25, 2003, the Board set aside an October 31, 2001 decision of the Office on the grounds that there was an outstanding March 23, 2001 request for reconsideration.¹ The Board remanded the case to the Office for review of appellant's March 23, 2001 request and accompanying evidence, and issuance of an appropriate decision. The law and the facts as set forth in the prior decision are hereby incorporated by reference.²

In a March 23, 2001 brief and accompanying affidavit, appellant alleged the following incidents: from August 1997 through August 1999, he was constantly harassed and threatened by coworker, Howard Crosby; in June 1998, Mr. Crosby "exploded" when appellant requested customer information, and a supervisor refused to intervene other than reading appellant material about getting along with coworkers; Mr. Crosby used obscenities with appellant in June 1998 and physically intimidated him; in early 1999, Mr. Crosby became boisterous and yelled at appellant about a computer problem; on June 5, 1999 Mr. Crosby yelled at appellant to "hold it down" in front of appellant's customer; on July 13, 1999 Mr. Crosby yelled at and physically intimidated appellant; appellant informed Postmaster Pete Jordan who instructed appellant to write a letter of complaint; on July 14, 1999 Mr. Jordan met with appellant and read him material about getting along with coworkers, and advised appellant that he would have the same conversation with Mr. Crosby; on July 14, 1999, after meeting with Mr. Jordan, Mr. Crosby twice yelled at appellant in the presence of appellant's supervisor, Larry Wells, and appellant filed a complaint.

Appellant also submitted witness statements. In a November 14, 2000 affidavit, Larry Rouse, a coworker, stated that "Mr. Crosby would ride [appellant] on a regular basis" but did not recall specific dates of any confrontations because they happened so often.³ In a March 23, 2001 affidavit, Eddie Goodlow, a postal customer, stated that, on "approximately June 5, 1999," while being waited on by appellant, Mr. Crosby, who was working the adjacent window, "yelled extremely loudly" at appellant and Mr. Goodlow to "shut up and hold it down." Appellant did not respond to Mr. Crosby.

Appellant also submitted medical evidence. Dr. Thomas M. Ward, an attending psychiatrist, noted appellant's chest pain and "job stress" in a September 16, 1999 report and on December 20, 1999 diagnosed "anxiety/depression job-related stress." On January 24, 2000 Dr. Ward noted appellant's fear and agitation as the employing establishment would not

¹ Appellant's emotional condition claim was originally denied by a December 30, 1999 decision, later affirmed by March 23 and August 23, 2000 decisions.

² In the prior decision, the Board did not address the evidence accompanying the March 23, 2001 request for reconsideration as it was not relevant to the timeliness issue then before the Board. As the Board must adjudicate the merits of the emotional condition on the present appeal, the evidence accompanying the March 23, 2001 reconsideration request will be detailed *infra*.

³ In a November 15, 2000 affidavit, Paula Williams, a coworker, alleged that management did not intervene to stop her harassment by a coworker, but did not mention Mr. Crosby or appellant. Her statement is therefore irrelevant to appellant's claim.

reprimand Mr. Crosby. Dr. James Trice, an attending Board-certified gastroenterologist, opined in a November 3, 1999 report that appellant's peptic ulcer disease "appear[ed] to be aggravated by working conditions (job)." Dr. Stephen Broughton, an attending psychiatrist, submitted chart notes from November 8, 1999 to April 3, 2000 holding appellant off work due to depression and anxiety caused by Mr. Crosby's hostile interactions and management's lack of intervention despite the threat assessment team's finding of harassment. Appellant was also frustrated over the processing of his compensation claim.⁴

By decision dated July 18, 2003, the Office denied modification on the grounds that appellant had not established any compensable employment factors. The Office found as factual, but not compensable, that appellant wrote two letters to Mr. Jordan regarding Mr. Crosby, contacted the threat assessment team, and that the team conducted a review and reported its findings. The Office found that appellant had not established the following as factual: Mr. Crosby screamed in appellant's face in front of Mr. Wells and appellant's coworkers; in late 1997 and 1998, appellant repeatedly pleaded with Mr. Crosby to desist from his confrontations and attempted to avoid Mr. Crosby; in June 1998 Mr. Crosby displayed a potential for violence; in early June 1999 Mr. Crosby told appellant and a customer to "hold it down," thereby embarrassing appellant; on July 13, 1999 Mr. Crosby screamed at and intimidated appellant; on July 14, 1999 Mr. Jordan called appellant into his office and read him material about getting along with coworkers and instructed appellant to have no future conversations with Mr. Crosby; on July 14, 1999, after meeting with Mr. Jordan, Mr. Crosby twice yelled at appellant attempting to provoke a conflict.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for personal injuries sustained while in the performance of duty.⁵ Where disability results from an employee's reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁶ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.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 disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed

⁴ Appellant also submitted copies of Dr. Broughton's October 6 to 18, 1999 treatment notes previously of record and considered by the Office.

⁵ 5 U.S.C. § 8102(a).

⁶ 5 U.S.C. §§ 8101-8193; *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *Effie O. Morris*, 44 ECAB 470 (1993).

compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship.⁹ If a claimant implicates 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 asserts that harassment from August 1997 to August 1999 by coworker Mr. Crosby caused depression and anxiety with consequential peptic ulcer disease. Disputes and incidents alleged as constituting harassment or discrimination by supervisors and coworkers, if established as occurring and arising from the employee's performance of his or her regular duties, could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹² Mere perceptions of harassment or discrimination are not compensable under the Act.¹³

The Board finds that appellant has established three compensable incidents of harassment by Mr. Crosby. Appellant corroborated his allegation that, on June 5, 1999, Mr. Crosby yelled at him in front of Mr. Goodlow, a postal customer, to "hold it down." Appellant submitted Mr. Goodlow's March 23, 2001 affidavit confirming that the incident occurred as alleged. Appellant has also established that, on July 8, 1999, Mr. Crosby remarked that appellant was "working the front window, not the front office," and on July 14, 1999 Mr. Crosby asked appellant if he was "after him."¹⁴ As appellant alleged specific incidents of harassment by Mr. Crosby and submitted evidence substantiating his allegations, appellant has established that such harassment occurred and formed a compensable factor of employment.¹⁵

The Board further finds that appellant has not submitted sufficient corroborating evidence to establish as factual the alleged June 1998 and July 13, 1999 verbal altercations or the early

⁹ See *Normal L. Blank*, 43 ECAB 384 (1992); see *Barbara Bush*, 38 ECAB 710 (1987).

¹⁰ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003).

¹¹ *Janice I. Moore*, 53 ECAB ____ (Docket No. 01-2066, issued September 11, 2002). See *David W. Shirey*, 42 ECAB 783 (1991).

¹² *Marlon Vera*, *supra* note 10.

¹³ *Kim Nguyen*, 53 ECAB ____ (Docket No. 01-505, issued October 1, 2001).

¹⁴ While the Office found in its August 23, 2000 decision that these incidents occurred, they were found noncompensable as the employing establishment's intervention, including a threat assessment team investigation, removed appellant from the performance of duty. However, as set forth in the Board's prior decision, management intervention does not remove a harassment victim from the performance of duty. *Roya D. Lofti*, 48 ECAB 681 (1997).

¹⁵ Compare *Katherine A. Berg*, 54 ECAB ____ (Docket No. 02-2096, issued December 23, 2002) (appellant's emotional condition claim was denied as she alleged harassment without providing specific examples or corroborating evidence).

1999 incident about a computer problem. Although appellant asserts that the July 29, 1999 investigative report previously of record corroborates these incidents, the report states only that four unidentified window clerks alleged that Mr. Crosby made “derogatory comments and physical threats” to appellant and tried to provoke him after a meeting with Mr. Jordan. The report does not provide dates of any of the alleged incidents or describe any of Mr. Crosby’s alleged remarks. Therefore, the investigative report is too vague to establish these incidents as factual.¹⁶

As appellant has established the June 5, July 8 and 14, 1999 incidents as compensable factors of employment, the medical evidence must be examined to determine if it supports a causal relationship between those factors and the claimed emotional and gastric conditions. Appellant submitted reports from three attending physicians. Dr. Ward, a psychiatrist, diagnosed anxiety and depression with job-related stress. Dr. Trice, a gastroenterologist, opined that unspecified “working conditions” could aggravate peptic ulcer disease. Dr. Broughton, a psychiatrist, opined that appellant’s depression and anxiety were related to Mr. Crosby’s outbursts. However, none of the three physicians provided medical rationale identifying the established work factors and explaining how and why those factors would cause or aggravate the claimed emotional and peptic ulcer conditions. As appellant has not submitted rationalized medical evidence setting forth a causal relationship between the accepted work factors and the claimed conditions, he has not met his burden of proof.¹⁷

CONCLUSION

The Board finds that appellant has not established that he sustained stress and anxiety leading to peptic ulcer disease in the performance of duty, as he submitted insufficient rationalized medical evidence to establish a causal relationship between the compensable factors of his employment and the claimed conditions.

¹⁶ *Myrna Parayno*, 53 ECAB ____ (Docket No. 01-1101, issued June 12, 2002).

¹⁷ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991). Also, Drs. Ward and Broughton mention appellant’s reaction to a perceived lack of employing establishment action against Mr. Crosby. However, the employing establishment’s disciplinary actions are administrative matters not within the performance of appellant’s duties, and appellant has not established error or abuse that would bring this matter under coverage of the Act. *Bobbie D. Daly*, 53 ECAB ____ (Docket No. 01-2115, issued July 25, 2002). Also, Dr. Broughton noted appellant’s frustration over the processing of his claim. Although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. *Janet L. Terry*, 53 ECAB ____ (Docket No. 00-1673, issued June 5, 2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 8, 2003 is affirmed.

Issued: February 18, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member