

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

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**FRANCIS G. DAVIS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Boston, MA, Employer**

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**Docket No. 03-2198  
Issued: January 22, 2004**

*Appearances:*  
*Francis G. Davis, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On September 8, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 17, 2003. 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 sustained an emotional condition in the performance of his federal duties.

**FACTUAL HISTORY**

On September 7, 2001 appellant, then a 57-year-old truck driver, filed an occupational disease claim (Form CA-2) alleging that his federal employment caused him to feel depressed, stressed and fearful. In support of his claim, appellant submitted an October 10, 2001 report from Dr. Alba De Simone, an attending clinical psychologist, who stated that appellant suffered from severe depression and anxiety attacks due to a stressful employment situation. He added

that appellant was afraid to go to work because he feared being humiliated, harassed and threatened by management and coworkers. Dr. De Simone also stated that appellant suffered from post-traumatic stress disorder due to a work-related automobile accident.

The Office sent appellant a letter requesting more information. Appellant submitted an undated letter in which he described various incidents that he believed led to his condition. On June 19, 2000 appellant was involved in an accident while driving his postal truck that resulted in personal injuries that prevented him from further driving. The loss of his opportunity to drive a big truck caused him to lose pride and self-respect. On March 4, 1994 he got married on the spur of the moment but he was afraid to ask for time off to take a honeymoon and felt shortchanged. On September 12, 1994 appellant asked for a specific route but was told that it was already promised to someone else. Appellant listed 24 occasions between September 12, 1994 and October 11, 1996 where he requested leave and it was either denied or he was unhappy with how the leave request was handled by his supervisors. On three occasions, September 26 and December 26, 1995 and August 14, 1996, his car was vandalized while at work. On one occasion a profanity laced note written on postal stationary was left on his car. Appellant later recognized the handwriting of one of his supervisors as being the same as the writing on the flyer on his car. Appellant alleged that on April 4, 1996 his supervisor questioned his driving practices. On December 3, 1996 he was embarrassed when his supervisor asked him to pick up rubbish. On July 10, 1998 appellant became upset because he was sent for a fitness-for-duty examination after he reported sinus problems and already had a note from his doctor.

On February 3, 1998 appellant was issued a letter of warning that was later rescinded. On February 20, 1998 he had a verbal confrontation with a coworker, Steve Curio, who used profanity and accused appellant of not picking up all his mail. According to appellant, Mr. Curio later bent the mirror on appellant's postal vehicle. Appellant alleged that on May 4, 1998 he requested a new postal vehicle but it was denied; yet later a coworker, driving the same route, received a new vehicle. Appellant alleged that, after his June 19, 2000 work injury, he was told that his light-duty assignment would include some driving, but he was only allowed to drive a few times while another, similarly situated, injured worker was allowed to drive hundreds of times. Appellant alleged that his supervisor failed to give him an office key though he requested one three times. Appellant filed 20 grievances and 1 Equal Employment Opportunity (EEO) complaint against management and was successful in 8 of them with 12 still pending. The EEO complaint was dismissed. In late May 2001, his light-duty supervisor, Lois Glickman, spit water and some landed on his desk. She later humiliated him by showing him how to empty a waste basket. On August 30, 2001 Ms. Glickman belittled appellant and made him feel foolish when she told him to "read her lips."

In a September 7, 2001 letter, Ellen Wholey, appellant's light-duty manager and the supervisor of Ms. Glickman, noted that appellant came to her with a Form CA-2 and said that on more than one occasion he was belittled by Ms. Glickman in front of his coworkers. The most recent incident occurred when she told appellant to make copies of a document, showed him how to empty a trash can and told him to read her lips. According to Ms. Wholey, she brought the two together and they described the situation as if it were a miscommunication. According to Ms. Wholey, appellant told Ms. Glickman that she did a great job. Ms. Wholey added that both parties smiled, shook hands and apologized to each other and stated that the incident was over.

In a March 7, 2002 statement, Ms. Glickman noted that she accidentally spit water, but denied any water landed on appellant's desk. The record contains a profanity laced handwritten statement, but it is not on postal stationary, as appellant had alleged. The record also contains a January 18, 2002 report from Dr. Donald Sherak, a psychiatrist, who conducted a fitness-for-duty examination and diagnosed post-traumatic stress and severe depression but who found that appellant could perform his light-duty job.

In a March 8, 2002 decision, the Office denied appellant's claim finding that he failed to establish a compensable employment factor that arose in the performance of his federal duties. Specifically, appellant's allegations of disagreements about leave, disparate treatment about new vehicles and how supervisory duties that were performed would not be covered absence error or abuse. The allegations about spitting and the flyer were found to not be factually established as the flyer was not on postal stationary and that Ms. Glickman denied water landed on appellant's desk.

Appellant requested an oral hearing and submitted a March 14, 2002 statement from Eugene Gaul, a coworker, who noted that he was given a new vehicle to drive on a postal route that appellant had previously driven. Gary Parcellin, a coworker, also submitted a statement indicating that appellant was treated callously and intentionally maliciously when a supervisor announced over a loud speaker that appellant's mirror had been damaged.

In a June 17, 2003 decision, the hearing representative affirmed the March 8, 2002 decision finding that appellant failed to establish that his condition arose from a factor in the performance of his federal duties.

### **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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> This burden includes the submission of a detailed

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

### ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated March 8, 2003, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave, improperly assigned work duties, and unreasonably monitored his activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>7</sup> Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties, and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>8</sup> 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.<sup>9</sup> However, appellant did not submit sufficient

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<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>8</sup> *Id.*

<sup>9</sup> *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

evidence to establish that the employing establishment committed error or abuse with respect to these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>10</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>11</sup>

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.<sup>12</sup> Appellant alleged that supervisors and coworkers made statements and engaged in actions such as spitting water on his desk, vandalizing and putting flyers on his car, which he believed constituted harassment and discrimination. But appellant provided insufficient evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred by his coworkers or supervisors.<sup>13</sup> While the evidence supports a conflict between appellant and Ms. Glickman, the September 7, 2001 statement by Ms. Wholey suggests that the situation was resolved amicably for both parties. Ms. Glickman acknowledged that she spat water, but noted not on appellant's desk. Appellant has not submitted sufficient evidence to support his allegation that the incident constituted harassment by Ms. Glickman or retaliation against appellant. Ms. Wholey's statement supports that appellant, at least accepted Ms. Glickman's apology and indicated that the situation was resolved. The evidence in the record of the flyer on the car is of diminished probative value because it was not on postal stationary as appellant alleged. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.<sup>14</sup>

Regarding appellant's frustrations of not being allowed to drive a truck as often as another injured worker, the Board has held that an employee's dissatisfaction with working in an

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<sup>10</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>11</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>12</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>13</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>14</sup> *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

environment which is considered to be tedious, monotonous, boring or otherwise undesirable constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>15</sup> The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from his frustration in not being permitted to work in a particular environment or to hold a particular position.<sup>16</sup>

The Board has recognized the compensability of verbal altercations or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>17</sup> In the present case, appellant has not established, through corroborating witnesses, that he was subject to verbal threats or abuse from a coworker. Additionally, appellant has not shown how isolated comments, such as Ms. Glickman's alleged comment to "read my lips" would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.<sup>18</sup>

### **CONCLUSION**

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>19</sup>

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<sup>15</sup> See *David M. Furey*, 44 ECAB 302, 305-06 (1992).

<sup>16</sup> *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

<sup>17</sup> See *Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>18</sup> See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (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, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

<sup>19</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 17, 2003 decision by the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member