

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

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Warren, OH, Employer**

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**Docket No. 06-2045
Issued: December 13, 2007**

Appearances:

*John P. Lutseck, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 5, 2006 appellant, through his attorney, filed a timely appeal from a June 20, 2006 merit decision of a hearing representative of the Office of Workers' Compensation Programs denying his emotional condition claim. 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 March 31, 2005 appellant, then a 46-year-old mail carrier, filed an occupational disease claim alleging that he sustained stress, depression and anger because his supervisor

followed him, harassed him and ridiculed his performance.¹ He further asserted that management refused his leave requests and issued unwarranted letters of warning.

An inspector with the employing establishment interviewed appellant on April 6, 2005. Appellant maintained that his supervisor, Ryan Rozycki, constantly told him to work faster and joked that he took too long on his route. Mr. Rozycki disciplined him when he witnessed him returning to work from his home. He refused a form from appellant when he “forgot to clock out.” Mr. Rozycki assigned appellant work outside his restrictions. Appellant indicated that he and Mr. Rozycki might have a personality conflict.

In an interview with an inspector on April 6, 2005, Mr. Rozycki described appellant’s work as below average but he was treated the same as all the carriers. He began monitoring him after he went home while taking mail to other carriers. Mr. Rozycki did not refuse to give appellant forms or discipline him without cause. He forwarded all requests for leave without pay to the postmaster. Mr. Rozycki noted that requests for leave without pay were denied if other forms of leave were available. He based appellant’s restrictions on a September 23, 2003 work restriction evaluation.

By letter dated April 6, 2005, the Office requested that appellant submit additional medical and factual information, including a description of his required work duties and the specific incidents which he believed caused his emotional condition.

In a statement dated April 15, 2005, Rosanne Gerchak, appellant’s supervisor, discussed his work restrictions. She noted that, on September 18, 2004, management was unable to locate him. In a September 21, 2004 predisciplinary interview, appellant became angry with Mr. Rozycki and loudly accused him of joking with another carrier about finishing early and going home to watch sports at appellant’s house. He alleged that he sustained a new employment injury on September 23, 2004 and had additional work restrictions. On March 13, 2005 appellant told Ms. Gerchak that the employing establishment “constantly violated his restrictions” but did not specify how his restrictions were exceeded. Ms. Gerchak did not harass appellant and had not witnessed any instances of harassment.

An October 16, 2004 duty status report listed work restrictions for appellant, including standing for two to three hours. A duty status report dated March 7, 2005 listed work restrictions which included sitting one hour per day and standing one to one and a half hours per day. A November 22, 2004 limited-duty job offer from the employing establishment required sitting two hours per day with a change in position every half hour and standing two to three hours per day.

Appellant filed a November 18, 2004 Equal Employment Opportunity (EEO) complaint of discrimination based on age and disability. In a letter from his representative dated May 4, 2005, he asserted that the employing establishment harassed him at work and required him “to work outside of his restrictions on a consistent basis.” Appellant maintained that supervisors Veronica Rice, Richard Russ and Mr. Rozycki “constantly indicate they do not understand the restrictions” and harassed him both when he could case mail and when he worked limited duty.

¹ Appellant initially filed a claim for a traumatic injury but noted on his occupational disease claim that he had filed the wrong claim form.

The employing establishment “refused to provide limited duty which they were required to do, refused to provide light duty and complained to me about the extraordinary amount of leave I was taking as a result. This caused me to fear for the safety of my job and to believe I was in a hostile work environment.” Appellant attributed his job insecurity to the employing establishment’s refusing to adhere to his work restrictions or refusing to allow him to work.²

By decision dated May 13, 2005, the Office denied appellant’s claim on the grounds that he did not establish an emotional condition in the performance of duty. The Office determined that he had not established any compensable employment factors. The Office found that appellant did not specify how the employing establishment violated his work restrictions or provide specific dates in which he worked outside his restrictions. The Office noted that, if he was unable to work due to an employment injury, he should file a claim for compensation under the applicable claim.

On May 17, 2005 appellant requested an oral hearing. On March 30, 2006 the Office hearing representative denied his request for postponement and informed him that he would receive a review of the written record in lieu of an oral hearing. By decision dated June 20, 2006, the hearing representative affirmed the May 13, 2005 decision after finding that appellant had not established any compensable employment factors.

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.³ 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.⁴

Administrative and personnel matters, although generally related to the employee’s employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁵ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁶

² Appellant also submitted medical evidence in support of his claim.

³ 5 U.S.C. § 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 556 (1991).

⁶ See *William H. Fortner*, 49 ECAB 324 (1998).

In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁷

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁸ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁹ The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹¹

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.¹² 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.¹³

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *See Michael Ewanichak*, 48 ECAB 364 (1997).

⁹ *See Parley A. Clement*, 48 ECAB 302 (1997).

¹⁰ *See James E. Norris*, 52 ECAB 93 (2000).

¹¹ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹² *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹³ *Id.*

Appellant asserted that Mr. Rozycki and other supervisors harassed him by repeatedly requesting clarification of his work restrictions. He further maintained that Mr. Rozycki ridiculed his performance and informed him that he needed to work faster. Mr. Rozycki and another carrier joked about finishing early and watching sports at appellant's residence. He did not provide appellant with needed forms. If disputes and incidents alleged as constitutes harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his regular duties, these could constitute employment factors.¹⁴ The evidence, however, must establish that the incidents of harassment and discrimination occurred as alleged.¹⁵ In an April 6, 2005 interview, Mr. Rozycki described appellant's work as below average but that appellant was treated like all other carriers. Ms. Gerchak, a supervisor, noted that appellant became angry at Mr. Rozycki in a predisciplinary interview and shouted that he joked about him finishing work early with another carrier. She related that she had not harassed appellant or witnessed him harassed by others. Appellant has submitted no evidence, such as statements from coworkers, corroborating his allegation that his supervisors repeatedly asked for clarification of his work restrictions or that Mr. Rozycki joked about him. Thus, he has not established a compensable employment factor.

Regarding appellant's contention that Mr. Rozycki constantly monitored his work, the Board has held that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.¹⁶ This principle recognizes that a supervisor or manager must be allowed to perform their duties and that employees will at times dislike the actions taken; however, mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹⁷ Mr. Rozycki asserted that he began monitoring appellant after he discovered that he had returned to work from his home. Appellant has not provided any specific examples of improper monitoring of his work or provided any evidence that her supervisor acted unreasonably and thus has not established a compensable employment factor.

Appellant also contended that management wrongly denied his leave requests and issued unwarranted discipline. Although the handing of leave request and disciplinary actions are related to employment, they are administrative functions of the employer and not duties of the employee.¹⁸ 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.¹⁹ Mr. Rozycki denied that he issued appellant unwarranted discipline and indicated that he forwarded requests for leave without pay to the postmaster. He noted that such requests were

¹⁴ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁵ *Id.*

¹⁶ *See Judy L. Kahn*, 53 ECAB 321 (2002).

¹⁷ *Id.*

¹⁸ *Charles D. Edwards*, 55 ECAB 258 (2004); *Lori A. Facey*, 55 ECAB 217 (2004).

¹⁹ *Id.*

denied if the employee had other leave available. Ms. Gerchak indicated that she held a predisciplinary interview with appellant after management was unable to locate him on September 18, 2004. Appellant has not submitted any evidence corroborating his allegations that the employing establishment erred in denying leave requests or issuing discipline. Thus, he has not established a compensable employment factor.

Appellant generally alleged that the employing establishment forced him to work outside his restrictions and refused to provide him with limited-duty work. The Board notes that an emotional condition related to pain and other limitations resulting from an employment injury is covered under the Act.²⁰ Appellant, however, has not identified any specific violations of his work restrictions. A claimant must specifically identify the employment factors or incidents alleged to have caused his condition and establish a factual basis for his allegations with probative and reliable evidence.²¹ Appellant has not submitted evidence sufficient to establish that his physical restrictions were exceeded.

Appellant additionally attributed his emotional condition to job insecurity. The Board has held that a claimant's job insecurity is not a compensable factor of employment.²² As appellant failed to establish any compensable factors of employment, the Office properly denied his claim.²³

CONCLUSION

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

²⁰ *Arnold A. Alley*, 44 ECAB 912 (1993).

²¹ *See Charles D. Gregory*, 57 ECAB ____ (Docket No. 05-252, issued December 13, 2005) (where an employee fails to identify specific employment factors believed to be responsible for a claimed condition, the employee does not meet his or her burden of proof in establishing a claim for compensation).

²² *Robert Breeden*, 57 ECAB ____ (Docket No. 06-734, issued June 16, 2006).

²³ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Hasty P. Foreman*, 54 ECAB 427 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 20, 2006 is affirmed.

Issued: December 13, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board