

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED FABER and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

*Docket No. 99-1256; Submitted on the Record;
Issued October 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On February 26, 1998 appellant, a 33-year-old mail processor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that, on or about January 8, 1998, he sustained an emotional condition while in the performance of duty. He described his condition as "nervous, upset stomach and chest pains," which he attributed to employment-related stress.

In an accompanying statement dated February 25, 1998, appellant described a January 8, 1998 incident wherein he was engaged in a conversation with two employing establishment managers regarding "house parties." Appellant explained that when he asked Richard Kelleher about his "next party" and whether he would be receiving an invitation, Mr. Kelleher purportedly responded "If you ever show up at my house, I will get a stick and beat you. Then I will have to kill you." Appellant indicated that he was surprised by Mr. Kelleher's response and that he immediately walked away "upset and nervous about the threat." Later that same day, another manager, Ray Archer, advised appellant that he would be assigned a specific time for taking breaks and lunch. Appellant explained that he expressed objection to this treatment because ostensibly appellant was the only employee placed under such restrictions. He characterized this action as harassment and he requested to see a shop steward. Appellant's immediate supervisor, Jim Naples, subsequently granted his request to meet with a steward. While granting appellant's request, Mr. Naples also purportedly ordered appellant to take his break "immediately." Appellant explained that, as a result of the incidents involving Mr. Kelleher, Mr. Archer and Mr. Naples, he "felt threatened and in a hostile and stressful work environment."

By decision dated April 6, 1998, the Office of Workers' Compensation Programs denied appellant's claim based upon his failure to establish that he sustained an injury in the

performance of duty. The April 6, 1998 decision was subsequently affirmed by an Office hearing representative in a decision dated December 15, 1998.

The Board finds that appellant failed to establish that he sustained an emotional condition while in the performance of duty.

To establish that he 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 Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.²

In the December 15, 1998 decision, the Office hearing representative found that the January 8, 1998 statement attributed to Mr. Kelleher had been established as factual.³ The hearing representative, however, concluded that this incident did not occur in the performance of duty because there was no indication that the conversation regarding Mr. Kelleher's party "was related to ... [appellant's] work duties." Citing Board precedent, the hearing representative explained that "Coverage will not be afforded with regard to matters or interactions not directly related to ... [appellant's] job duties." Although the Board agrees with the Office's conclusion that Mr. Kelleher's January 8, 1998 statement is not a compensable employment factor, the Board rejects the rationale provided by the Office in reaching this conclusion. A threat by a manager to do bodily harm or to kill a subordinate employee warrants a more exacting analysis than merely whether the circumstances that gave rise to the threat were directly related to the employee's job duties.

The Board has recognized that verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances. This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.⁴ In the instant case, Mr. Kelleher's January 8, 1998 threat to beat and kill appellant if he showed up at his home is not covered under the Act because the record establishes that it was not a credible threat. First, it is noted that the employing establishment conducted two separate investigations to ascertain the credibility of Mr. Kelleher's January 8, 1998 threat. In both instances, the respective investigators concluded that the threat was not a credible one. Second, the record reveals that, during a January 14, 1998 meeting between appellant, several employing establishment officials and a union official,

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

² *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

³ As previously noted, appellant explained that Mr. Kelleher stated, "If you ever show up at my house, I will get a stick and beat you. Then I will have to kill you."

⁴ *Kimber A. Stokke*, 48 ECAB 510, 512 (1997); *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

appellant conceded that Mr. Kelleher “may have made the statement in jest” because the two men had “known each other for a long period of time.” Finally, appellant reported that approximately two weeks after the January 8, 1998 incident, he and Mr. Kelleher had a private conversation during which Mr. Kelleher apologized for his remarks. Appellant also indicated that when questioned by Mr. Kelleher as to whether appellant “really felt threatened by him,” appellant responded “I am not sure at times because I never know when to take [you] seriously.”

While Mr. Kelleher’s January 8, 1998 remarks were undoubtedly inappropriate for the workplace, his remarks were apparently made in jest and do not constitute a credible threat to do bodily harm to appellant. Prior to the January 8, 1998 incident, appellant and Mr. Kelleher had a longstanding and otherwise cordial relationship and socialized outside of work. Additionally, Mr. Kelleher made his remarks in a public setting. Furthermore, appellant acknowledged on at least two occasions that he was unsure whether Mr. Kelleher was serious when he stated, “If you ever show up at my house, I will get a stick and beat you. Then I will have to kill you.” As previously noted, appellant reportedly stated that, in light of their longstanding relationship, Mr. Kelleher “may have made the statement in jest....” While not dispositive of the issue, the fact that appellant apparently doubted whether Mr. Kelleher actually intended to harm him warrants serious consideration for purposes of determining the credibility of Mr. Kelleher’s ostensibly threatening remarks.

Having considered the totality of the circumstances, the Board finds that the January 8, 1998 incident involving Mr. Kelleher does not represent a compensable employment factor.⁵ With respect to appellant’s remaining allegations of harassment and mistreatment by management, the Board finds that the decision of the hearing representative of the Office of Workers’ Compensation Programs dated December 15, 1998 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.⁶

⁵ *Leroy Thomas, III, supra* note 4.

⁶ Inasmuch as appellant failed to implicate any compensable employment factors, the Office hearing representative properly denied the claim without addressing the medical evidence of record; *see Gary M. Carlo, supra* note 2.

The December 15, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
October 10, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member