

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL IOVINO and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

*Docket No. 02-945; Submitted on the Record;
Issued May 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that his emotional condition is causally related to factors of his federal employment.

On August 26, 1999 appellant, then a 47-year-old letter carrier, filed a notice of occupational disease alleging that he sustained an emotional condition as a result of being harassed by his supervisor.

In a September 21, 1999 letter, the Office advised appellant of the factual and medical evidence required to establish his claim.

The Office subsequently denied compensation by decisions dated October 22, 1999 and February 11, 2000, on the grounds that appellant failed to establish that his emotional condition occurred in the performance of duty.

In a June 15, 2000 decision, the Office modified the February 11, 2000 decision to reflect that appellant had established two compensable factors of his employment. The Office however determined that medical evidence was insufficient to establish a causal relationship between his emotional condition and the work factors identified.

On May 24, 2001 appellant requested reconsideration and submitted additional evidence.

In a decision dated June 21, 2001, the Office denied modification of its prior decision.

The Board finds that appellant failed to establish that his emotional condition is causally related to employment factors.

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying

employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act, as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.⁵ However, the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing with the claimant.⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor in general must be allowed to perform his or her duty and that, in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁵ See *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ See *Elizabeth Pinero*, 46 ECAB 123 (1994).

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

dislike of a supervisor's management style or actions taken by the supervisor will not be compensable without a showing through supporting evidence that the incidents or actions complained of, were unreasonable.⁸

On October 19, 1998 appellant contended that the postal manager, Debra Orton, ordered him into her office in an angry voice without explanation and told him that he had refused an order when he did not stand where she directed him to stand. Ms. Orton denied any recollection of this incident and stated that she spoke to appellant in a professional manner. The Board finds no evidence of error or abuse by appellant's manager by inquiring as to whether he was completing his job duties in a timely fashion. Such inquiries are generally administrative matters unrelated to the employee's regular or specially assigned duties.⁹

Appellant alleged that on April 26, 1999 Mr. Henson and supervisor Rosa Rach took turns standing behind and watching him as he cased mail. He further alleges that Mr. Henson stood across the street from a restaurant he was eating at for lunch and watched him during his lunch hour. Management contends that this was part of a normal inspection process. The Board notes that it is an administrative function of the employing establishment to monitor appellant's work and he has provided no factual support for his allegation that being monitored constituted harassment.¹⁰

On May 25, 1999 appellant completed a Form 3996, stating that he was unable to complete his route and sought extra help with the mail. He was subsequently relieved of his duties on May 27, 1999 without pay and put in an emergency off duty status for one month. Appellant was relieved for "Loss of Mail" but filed a union grievance over the matter. The employing establishment noted that he did not inform his supervisor that he was unable to deliver all of the mail on the date in question as required by policy. Disciplinary matters concerning an oral reprimand, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity.¹¹ There is no evidence of error or abuse by the employing establishment in putting appellant in an off-duty status.

Appellant alleged that management often disputed his estimated times on the 3996 forms he submitted. The employing establishment explained that every work morning, letter carriers were expected to complete the 3996 form and estimate how much time would be required to deliver the mail for the day. A supervisor may not agree with the estimate and had final say in the allotment of time and resources. The Board finds no error or abuse by appellant's supervisor in carrying out this administrative function.

On August 5, 1999 appellant related that Ms. Orton told the shop steward that his work case was being moved in front of the supervisors' desk because it took appellant 10 minutes to get coffee and he was usually 25 minutes late starting to work. Ms. Orton denied that appellant's

⁸ *Constance I. Galbreath*, 49 ECAB 401 (1998).

⁹ *See Edward C. Heinz*, 51 ECAB 652 (2000).

¹⁰ *See Brian H. Derrick*, 51 ECAB 417 (2000).

¹¹ *Gregory N. Waite*, 46 ECAB 662 (1995).

desk was moved in order that he be observed. She stated that he complained that he was being disrupted by other employees when his desk was at its prior location. The Board finds that the location of appellant's workspace is an administrative decision and there is no evidence of error or abuse.

On August 6, 1999 appellant was denied sick leave and placed in absent without leave status. During the next month, appellant alleged that he received 13 letters from Ms. Orton, seven of which were certified, concerning his job. He alleged that 12 of the letters mentioned removing him from his position. Matters involving the use of leave and procedures relating thereto, are administrative and personal matters that are not directly related to appellant's regularly assigned work duties.¹²

Appellant alleged that management undertook an improper investigation after Toby Simon, got into an argument with a customer.¹³ The Board has held that investigations are administrative functions of the employing establishment that do not involve an employee's regularly or specially assigned work duties and are not considered to be employment factors¹⁴

According to appellant, his supervisor, Les McCauley, followed him on the street and told someone that he had seen appellant stand at a traffic light while it turned green for three times before he crossed the street. Appellant contends that Mr. McCauley often glared at him through the window and had startled a customer. He also stated that Mr. McCauley threatened to take away his mail cart if he did not work faster and change his work habits. The Board, however, does not find that Mr. McCauley acted unreasonably in following appellant on his route to monitor his work.

In January 1988 Ms. Orton undertook a one-day inspection, after which she allegedly spoke to appellant in a demeaning manner for 45 minutes and accused him of under-performing his job. Appellant contends that he lost the use of his mail cart because Ms. Olsen observed a homeless person looking in the cart while it was unattended. The record establishes that appellant was reprimanded by Ms. Olsen but there is no evidence that her behavior was unreasonable or rose to the level of harassment in this incident.¹⁵

On August 18, 1998 appellant was criticized for the amount of time he was taking in performing his job duties. Contrary to appellant's allegation, his emotional reaction to supervisory criticism is self-generated. The assessment of work performance although generally

¹² See *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹³ Appellant alleges that for three days he was retrained by Mr. Simon, who stood behind him in the office and walked with him on the street to observe appellant delivering the mail. He contends that, on the second day, Mr. Simon improperly delivered business mail, locked a key inside an apartment and had an argument with a customer.

¹⁴ *Mary L. Brooks*, 46 ECAB 266 (1994); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁵ Ms. Olsen accused appellant of yelling at her on March 10, 1998 and appellant denies it. There are no witness reports to corroborate the exchange between appellant and Ms. Olsen on either dates in question.

related to the employment is an administrative function of the employing establishment and not a duty of the employee.¹⁶

Appellant attributes his emotional condition to having been unjustly accused by supervisor Ms. Rach as showing up late for work and for having been denied two hours of overtime on his route. Allegations concerning the assignment of overtime and supervisory discipline involve administrative functions of the employing establishment and are not compensable absent evidence of error or abuse.¹⁷

Appellant was told by a supervisor to cancel an afternoon appointment in order to get the mail delivered. The assignment of work duties is an administrative function of the employer and is not compensable in the absence of error or abuse. The employing establishment did not error or act abusively in denying appellant's request for two hours of overtime on his route. Thus because the majority of appellant's allegations concern administrative functions of the employing establishment, they are not compensable.¹⁸

The Office found that appellant had established two compensable work factors: when Ms. Orton accompanied appellant on his route performing a one-day inspection, during which time she spoke to appellant in an allegedly demeaning tone that was overheard by a customer and generated a customer complaint letter; and on April 26, 1999 when Ms. Rach stood behind appellant and watched him perform his duties. She was quoted as telling him that she had a revolver wrapped around her ankle. Although appellant reported the incident to management he did not get any follow-up.

It is well established that verbal abuse by a supervisor in the workplace may constitute a compensable factor of employment.¹⁹ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.²⁰ The Board finds that the evidence pertaining to the one-day inspection of appellant's duties performed by Ms. Orton, during which time, she allegedly spoke in a demeaning tone, does not establish that the supervisor was verbally abusive to appellant. The basis for the Office's finding a compensable work factor was the letter submitted by a customer regarding the tone of Ms. Orton's voice. While the customer may have found Ms. Orton's tone objectionable, it does not establish that Ms. Orton's conduct in inspecting appellant, rose to the level of abuse. There is also no evidence as to the content of the statement. It may be that Ms. Orton spoke loudly to appellant or that she spoke in a sharp manner. The evidence is unclear and does not establish the compensable nature

¹⁶ *Waite, supra* note 11.

¹⁷ *See generally, Robert W. Wisenberger, 47 ECAB 406 (1996); Janet I. Jones, 47 ECAB 345 (1996).*

¹⁸ There is no factual support for appellant's contention that Mr. Simon continually tried to provoke him or that Ms. Olsen consistently ignored him when he spoke to her. The Board likewise finds no factual support for appellant's contention that Ms. Olsen shook her finger at appellant demanding an explanation as to why he took more time than necessary in performing his job or that Ms. Orton told a union steward that appellant walked around on his route dazed and confused.

¹⁹ *David W. Shirey, 42 ECAB 783 (1991).*

²⁰ *Mary A. Sisneros, 46 ECAB 155 (1994).*

of the conversation. Not every verbal interaction in the workplace is compensable simply because a claimant takes issue with the tone of voice used by the speaker.²¹ In the absence of evidence to show verbal abuse or harassment by Ms. Orton in her conversation with appellant, regarding his work performance, appellant has failed to establish a compensable work factor.²²

Similarly, although a comment attributed to Ms. Rosa appears inappropriate, the Board does not find that it constituted a threat against appellant or that appellant reasonably perceived the comment as a threat. An investigation undertaken by Ms. Orton indicated that Ms. Rosa did make a remark in a joking fashion but that she had not even directed her remark at appellant. Rather, she made a joke to another postal worker as that individual walked by and said something to her. Appellant has not established that his emotional reaction to a comment made in a joking fashion to someone else should warrant a finding that he was threatened by Ms. Rosa. Appellant's emotional reaction to Ms. Rosa's remark is found self-generated and, therefore, not compensable.²³

In the absence of any compensable work factors, the Board concludes that appellant is unable to establish that he sustained an emotional condition in the performance of duty. The Board consequently finds that the Office properly denied compensation.²⁴

²¹ See *Tanya A. Gaines*, 44 ECAB 923 (1993). (The Board did not find verbal abuse although the claimant did not like the tone of voice used or what was said by the supervisor during a conversation about appellant's behavior toward a coworker).

²² Ms. Orton prepared a statement explaining that the customer overheard her trying to explain to appellant the importance of knowing his customers and their proper addresses, particularly since appellant's route had recently failed a National Address Audit. She denied using a demeaning tone or yelling at appellant.

²³ See generally, *Leroy Thomas*, 46 ECAB 946 (1995).

²⁴ Because the Board finds no compensable work factors it is unnecessary to evaluate the medical evidence.

The decision of the Office of Workers' Compensation Programs dated June 21, 2001 is hereby affirmed.

Dated, Washington, DC
May 9, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member