

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

JOHN F. CRITZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 04-1935
Issued: December 21, 2004**

Appearances:
John F. Critz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 16, 2004 denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury while in the performance of duty on May 5, 2004.

FACTUAL HISTORY

On May 13, 2004 appellant, a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 2004 "an abusive working condition occurred" when his supervisor "chewed him out" on the work floor for returning late from a break. He claimed that he experienced an acute anxiety reaction and elevation of his blood pressure. The accompanying supervisor's report signed by Edward Weche reflected that appellant did not report the alleged incident until he contacted the union office. The supervisor contested appellant's version of the

facts, stating that appellant had just reported to duty after a four-hour absence when he “proceeded to absence himself from the work floor for a full hour.”

On June 8, 2004 the Office notified appellant that the evidence submitted was insufficient to support his claim and advised him to provide additional documentation, including a diagnosis and a physician’s opinion as to how his injury resulted in the diagnosed condition; statements from anyone who witnessed the injury and a history of any preexisting condition.

In response, appellant provided a duty status report and leave slip; memorandums from a union representative and from the Office to the file; Form CA-7 dated July 6, 2004; a personal statement and responses to the Office’s questions posed in its deficiency letter; and several medical documents, including a letter from Dr. David Barrett, a Board-certified psychiatrist.

Appellant stated that he suffered from a chronic anxiety disorder, obsessive compulsive disorder and depression and that the Department of Veterans Affairs had awarded a 50 percent disability due to his psychiatric disorder stemming from military service.¹ He asserted that his rating had increased from 10 percent to 50 percent since he began working for the employing establishment. Appellant explained that on May 5, 2004 he arrived at work four hours late, having originally asked for two hours of leave but requiring an additional two hours due to car trouble. His leave was extended by another supervisor with no penalty. Shortly after arriving at work, he left the floor “to get something to eat” and returned approximately one hour later, whereupon he was intercepted by his supervisor. Appellant reported that Mr. Weche “blurted out” questions regarding his whereabouts and a warning that similar behavior in the future would be a cause to “write him up.” There was some reported discussion of appellant’s need to rest his arm and hands due to a previous injury. He then observed that the supervisor appeared to be snarling at him and pointing with his arm fully extended to his work unit commanding “You will stay in the unit when that happens!” Appellant indicated that he felt degraded, humiliated and embarrassed as a result of this incident.

Dr. Barrett’s duty status report dated June 22, 2004 reflected employee’s allegation of an emotional injury on May 5, 2004 and a diagnosis of anxiety and depression. On June 15, 2004 Dr. Barrett opined that the altercation with appellant’s supervisor aggravated his neuropsychiatric problem. He stated that, following the confrontation, appellant was “quite upset” and complained of anxiety and depression and that the mood problems escalated over a few weeks leading to his hospitalization from May 25 through June 2, 2004.

By decision dated July 16, 2004, the Office denied appellant’s claim for compensation on the grounds that the evidence was not sufficient to establish that he sustained an injury on May 5, 2004. The Office found that there was no evidence either to corroborate appellant’s allegations that his supervisor acted abusively or in error on that date.²

¹ This assertion was confirmed by a November 30, 1995 Department of Veterans Affairs rating statement.

² Appellant submitted several documents subsequent to the Office’s July 16, 2004 decision. The Board’s review is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, cannot consider the untimely evidence.

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."⁵

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁷

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 Act. On the other hand, the disability is generally not covered where it results from actions relating to administrative or personnel matters, including matters involving the discipline of employees,⁸ unless there is evidence of error or abuse on the part of the employing establishment.⁹ A "reasonableness"

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8102(a).

⁵ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁶ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

⁷ *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003). *See also Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002); *Tracey P. Spillane*, 54 ECAB ____ (Docket No. 02-2190, issued June 12, 2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

⁸ *James E. Norris*, 52 ECAB 93, 101 (2000).

⁹ *Peter D. Butt Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004). *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); and *Joseph DeDonato*, 39 ECAB 1260, 1266-67 (1988).

standard has been used by the Board in determining whether the employing establishment has erred or acted abusively.¹⁰

To establish entitlement to benefits, a claimant must establish with probative, reliable and substantial evidence a basis in fact for the claim¹¹ and that the condition for which he claims compensation was caused or adversely affected by employment factors.¹²

The Board has recognized the compensability of verbal altercations or abuse in certain circumstances; however, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹³ For harassment or discrimination to give rise to a compensable disability, there must be evidence that the alleged actions did, in fact, occur. Perceptions and feelings alone are not compensable.¹⁴

ANALYSIS

In the present case, appellant alleged that he sustained an acute anxiety reaction as a result of verbal abuse by his supervisor. The Office denied his claim on the grounds that he did not establish a compensable employment factor. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the Act.

The Board finds that appellant's allegations of improper disciplinary actions on the part of the employing establishment relate to administrative or personnel matters, are unrelated to his regular or specifically assigned work duties and do not fall within coverage of the Act. Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁵ In certain situations, where the evidence discloses error or abuse on the part of the employing establishment, such an administrative or personnel matter may be considered an employment factor for purposes of coverage under the Act.¹⁶ However, in the instant case, the Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to the allegations.

Appellant's description of the May 5, 2004 incident was disputed by his supervisor. Appellant acknowledged that he arrived at work at 6:30 p.m., four hours late, due to car trouble and then took his regular break from 8:05 p.m. until 8:55 p.m. He alleged that, upon his return to

¹⁰ *Peter D. Butt, Jr.*, *supra* note 9; *see also Kathleen A. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Judy A. Kahn*, 53 ECAB ___ (Docket No. 00-457, issued February 1, 2002).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹³ *Dennis J. Balogh*, 52 ECAB 232 (2001); *see also Robert Knoke*, 51 ECAB 319 (2000).

¹⁴ *James E. Norris*, *supra* note 8.

¹⁵ *Peter D. Butt, Jr.*, *supra* note 9.

¹⁶ *Janet I. Jones*, *supra* note 9.

work, his supervisor intercepted him on the work floor where a confrontation ensued. Appellant characterized the supervisor's behavior as brutal and abusive, causing him to feel degraded, humiliated and embarrassed. The supervisor's report, however, indicated that, after arriving four hours late, appellant "proceeded to absent himself from the work floor for a full hour." When appellant returned to the unit, his supervisor informed him that such work conduct was unacceptable and that he was required to remain in his assigned area "like everybody else." He stated that appellant was not on break, having just reported to duty after a four-hour absence. Following their discussion, appellant returned to his section where he remained until the end of his tour. The supervisor conveyed that appellant exhibited no unusual behavior and never informed him of an injury. Appellant submitted no supporting evidence, such as witness statements, to establish that the allegations of abusive statements were made.

Allegations alone by a claimant are generally insufficient to establish a factual basis for an emotional condition claim but rather must be supported by the evidence.¹⁷ However, even if appellant's allegations were taken as true, the supervisor's alleged statements and actions do not rise to the level of abuse. Under the circumstances, the supervisor's reprimand was not unreasonable. After coming to work four hours late, appellant left his workplace for an hour to "get something to eat." The supervisor asked appellant where he had been; warned him that the next time he behaved in such a manner he would "write up" appellant; and told him to stay on the floor the next time he wanted to rest his arm. The fact that the supervisor may have appeared angry and that he was pointing in the direction of appellant's work unit does not constitute abuse or error but rather would have been reasonable under the circumstances.

While the Board has recognized the compensability of physical threats or verbal abuse,¹⁸ the supervisor's behavior, even accepting appellant's version of the facts, does not constitute a compensable factor. In *Carolyn S. Philpott*,¹⁹ the Board denied a traumatic injury claim filed by a 45-year-old letter carrier alleging that she sustained an emotional condition as a result of a confrontation with her supervisor. The employee and her supervisor spoke in tones that enabled those present to overhear certain portions of their conversation. The Board found that the supervisor's act of reprimanding appellant for using profanity and exhibiting hostile behavior was not unwarranted or that it amounted to verbal abuse.²⁰

In *Roger Williams*,²¹ the Board found that a supervisor's reprimand, which allegedly caused the employee's physical collapse, did not constitute a compensable factor of employment. Although he alleged that he became "upset" during the conversation with the supervisor, the

¹⁷ *Charles E. McAndrews*, *supra* note 5; *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence corroborated such allegations).

¹⁸ *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

¹⁹ *Carolyn S. Philpott*, 51 ECAB 175 (1999).

²⁰ *Id.* at 179.

²¹ *Roger Williams*, 52 ECAB 468 (2001).

Board found that the employee had not submitted any evidence that his reprimand was in error or abusive.²²

In *Robert Bartlett*,²³ however, the Board found that the employee established a compensable factor of employment after submitting evidence corroborating abusive statements made by his supervisor regarding his military service in Vietnam which he asserted contributed to his emotional condition. Appellant's coworker related that his supervisor approached appellant and said, "So Bob what did you do in Vietnam just shoot everybody, women and kids too?"²⁴ The Board determined that appellant had established verbal abuse and remanded the case for determination as to whether the abuse aggravated or contributed to his emotional condition.²⁵ This case can be distinguished from *Bartlett*. In *Bartlett*, the supervisor's statement, which was corroborated by witnesses, was made with knowledge of the employee's diagnosed post-traumatic stress disorder related to his military service in Vietnam and for which he regularly participated in therapy. In this case, appellant has failed to substantiate any alleged abuse. Further, his supervisor's statements and actions appear reasonable and related to a disciplinary act, which is an administrative matter.

Appellant has not established a compensable employment factor with respect to the claimed abuse. Therefore, it is not necessary to address the medical evidence.²⁶

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

²² *Id.* at 473.

²³ *Robert Bartlett*, 51 ECAB 664 (2000).

²⁴ *Id.* at 665.

²⁵ *Id.* at 667.

²⁶ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992) (noting that, if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed). Allegations by appellant made in his personal statement that he suffered abuse by the employing establishment for the duration of his 16 years of employment are not relevant to his traumatic injury claim, but rather may be addressed in a separate occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 16, 2004 is affirmed.

Issued: December 21, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member