



and anxiety. He received follow-up treatment at the emergency room on March 14, 2002 for anxiety attacks and stress at work.

In a statement accompanying appellant's claim, Trina Kelly, appellant's supervisor, related:

"On Feb[ruary] 28, 2002, [appellant] claims that he was sent to the hospital in emergency because of stress caused by me. What I know is that the reason that he went to the hospital [is] because he was taking medication for his tooth as well as medication for a cold and taking them together caused a reaction that made him have palpitations of the heart."

Ms. Kelly called appellant twice while he was off work from February 28 to March 4, 2002 in order to determine his leave status. He told her that he did not want to use sick leave. Appellant stopped work again on March 15, 2002. Ms. Kelly denied harassing or screaming at him. She stated, "I have spoken to [appellant] upon him returning from a route about the time it is taking him, asking him what happened on the street because of the time it took him...."

In a report dated May 30, 2002, Dr. J.L. Benitez, a Board-certified psychiatrist, indicated that appellant went to the emergency room on February 28, 2002 after he had palpitations at work. Dr. Benitez noted that appellant's supervisor told him that he should use annual leave rather than sick leave when he returned to work on March 5, 2002 and that she had loudly reprimanded him for taking more time than allotted to deliver mail on March 14, 2002. He diagnosed an adjustment disorder with anxiety and panic attacks caused by appellant's "feeling of being overburdened and unfairly treated at work." Dr. Benitez opined that appellant experienced an acute stress disorder due to the February 28, 2002 incident.

In witness statements received by the Office on June 19, 2002, R. Delgado, Gloria B. Williams and Linda K. Hughes each related that Ms. Kelly did not raise her voice to appellant. In a statement received by the Office on July 1, 2002, Richard Derosa indicated that he received a telephone call from a customer on February 28, 2002 about appellant, who felt sick on his route after taking cold medication. Mr. Derosa noted that an ambulance took appellant to the hospital and that he requested nonscheduled time rather than leave until the day he returned to work. On March 14, 2002 appellant took five and a half hours to perform three and a half hours of work. Mr. Derosa noted that appellant's supervisor questioned him to find out why he had taken so long on his route, and noted that "Sup[ervisor] Kelly is a soft[-]speaking person who know[s] her job and position and is able to delegate and instruct employees without the use of loud tones."

In a medical report dated August 6, 2002, Dr. Benitez indicated that he had treated appellant since March 20, 2002 for anxiety and panic attacks which began on February 28, 2002 "while he was discharging his duties as a mail carrier...." Dr. Benitez related, "[appellant] stated that for some time he had been under undu[e] pressure and stress at work because he was not allowed enough time for delivering the mail." He noted that appellant described a confrontation with his supervisor upon his return to work on March 5, 2002 "in regard to the time he was out of work."

In a statement dated June 10, 2002, a coworker<sup>1</sup> related that he believed that Ms. Kelly was taking advantage of appellant because he did not understand the employing establishment's procedures. The coworker stated that when he tried to intervene Ms. Kelly told him "to shut up and mind my own business...."

Kevin C. Gorman, a coworker, submitted a statement dated May 31, 2002 in which he related that appellant told him that he was receiving medical treatment "because he was getting pressured at work and became very stressed and nervous all because of his supervisor, [Ms.] Kelly."

By decision dated September 6, 2002, the Office denied appellant's claim on the grounds that he did not establish an injury in the performance of duty. The Office found that appellant had not established any compensable factors of employment.

Appellant, through his representative, requested a hearing on his claim in a letter dated September 18, 2002.

In a report dated November 22, 2002, Dr. Michael Schwarz, a Board-certified internist, noted that appellant had received treatment from his clinic since 1995 and had no prior history of an emotional condition. Dr. Schwarz stated, "[Appellant's] emotional condition is, in part, directly related to stress that he experiences while attempting to deliver his mail within the time constraints imposed on him by the [employing establishment] management." He opined that appellant's symptoms on February 28, 2002 were due to anxiety rather than cardiac arrhythmias. Dr. Schwarz concluded:

"During the time away from the strict regulations with regard to the time [that] [appellant] is allowed to be on the street delivering his mail, his symptoms of anxiety and depression resolved establishing the causal relationship of his emotional condition and work environment."

At the hearing, held on April 8, 2003, appellant related that he began working as a part-time letter carrier in May 2001. He related that he began to experience problems at work beginning in September 2001, when Ms. Kelly became his supervisor. Appellant was assigned short routes to deliver and had to walk between the different routes because he did not have a car. He alleged that Ms. Kelly did not provide him with enough time or sufficient help and screamed at him in front of coworkers about the time it took him to complete his route. Appellant related that he often did not eat lunch, take breaks or drink water because he did not have enough time on his route to stop. On February 28, 2002 he was delivering very heavy mail and tried to do his job but could not breathe. Appellant denied taking any medication on February 28, 2002 and noted that his dental appointment was one week prior, on February 20, 2002. He alleged that Ms. Kelly did not want to pay him sick leave for the time that he was out of work and questioned how long it took him to deliver mail on March 15, 2002. Appellant's attorney argued that appellant experienced stress in the performance of his duties, as a letter carrier, because his supervisor found that he was taking too long to deliver mail. He noted that appellant was anxious on his route as evidenced by the fact that he did not take lunch or a

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<sup>1</sup> The name of the coworker is not legible.

bathroom break. Appellant's attorney noted that the employing establishment confirmed that it took appellant five and a half hours to deliver a three- and -a- half-hour route.

In a statement received by the Office on May 27, 2003, appellant related that he requested sick leave when he returned to work on March 5, 2002 but was told that he had to take vacation days because he had previously stated that he did not want to use sick leave. Appellant stated that Ms. Kelly harassed and verbally abused him. He related that, when he returned to the employing establishment after delivering mail on March 14, 2002, Ms. Kelly "started screaming at me once again, asking me why I took so long, in front of other employees, making me feel anxious enough to send me to the doctor's office right away."

Dr. Schwarz, in a report dated May 3, 2002, noted that appellant attributed his depression and anxiety to problems with his supervisor. He opined that appellant's relationship with his supervisor might have caused or contributed to his condition.

In a report dated May 30, 2002, received by the Office on May 15, 2003, Dr. Benitez described appellant's history of injury and his previous finding of an adjustment disorder with anxiety and panic attacks due to feeling "overburdened and unfairly treated at work." He found that appellant was totally disabled from employment for at least a year.

A grievance filed by appellant against management for failing to provide a safe working environment was denied on August 27, 2002 as not established. A grievance filed by appellant alleging aggression and intimidation by Ms. Kelly was denied on June 25, 2002 as without merit and untimely.

On May 13, 2002 Ms. Kelly denied screaming at appellant and noted that he did not ask for help because, as a part-time flexible carrier, he could "work as many hours as needed for that day..." Regarding March 14, 2002, Ms. Kelly related that she questioned appellant about the time he took to complete his route and that he told her that he had a heavy volume. She stated that she showed appellant the volume, which was low and told him that she "would probably walk him, meaning I would go out with him and observe how he is delivering the mail..." Ms. Kelly indicated that the rules required that street management for all carriers be performed once a year. She further noted that, for the period February 28 to March 3, 2002, appellant requested sick leave after the time sheets were already processed. Ms. Kelly related that on February 28, 2002 she asked appellant whether he could do his route because his cheek was puffy from a dentist appointment the previous day and he had a cold.

In a decision dated June 18, 2002, the hearing representative affirmed the Office's September 6, 2002 decision.

### **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>2</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>3</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>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</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>6</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>7</sup>

### ANALYSIS

Appellant attributed his depression and anxiety to harassment and verbal abuse by his supervisor, Ms. Kelly. He contended that Ms. Kelly screamed at him that he was taking too long to deliver the mail in front of his coworkers. Actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act.<sup>8</sup> However, for harassment to give rise to a compensable factor of employment there must be evidence that the harassment did, in fact, occur.<sup>9</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discriminated occurred. To establish entitlement, the claimant must establish a factual basis for the claim by supporting his allegations with probative and reliable

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Roger Williams*, 52 ECAB 468 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Claudia L. Yantis*, 48 ECAB 495 (1997).

<sup>5</sup> *Roger Williams*, *supra* note 3.

<sup>6</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>7</sup> *Id.*

<sup>8</sup> *Ernest J. Malagrida*, 51 ECAB 287 (2000).

<sup>9</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

evidence.<sup>10</sup> Additionally, verbal altercations, when sufficiently detailed by appellant and supported by the evidence of record, may constitute a compensable factor of employment.<sup>11</sup> However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>12</sup> Ms. Kelly acknowledged questioning appellant about the time it took him to perform his route but denied screaming. Witness statements support that Ms. Kelly did not raise her voice to appellant. A grievance filed by appellant against Ms. Kelly for intimidation was denied as without merit and untimely. Appellant has not provided sufficient factual evidence to support his allegations that Ms. Kelly either harassed him or was verbally abusive. Consequently, appellant has not established a compensable factor under the Act with respect to the claimed harassment and verbal abuse.

Regarding appellant's allegations that Ms. Kelly refused to let him use sick leave for the time period February 28 to March 5, 2002, the Board notes that, although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee.<sup>13</sup> As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act absent a showing of error or abuse by the employing establishment.<sup>14</sup> Although appellant alleged that his supervisor acted unreasonably, he has not provided evidence to support any error or abuse by Ms. Kelly. Ms. Kelly noted that appellant initially told her that he did not want to use sick leave and that by the time he requested sick leave, the time sheets for the pay period had been completed. Mr. Derosa noted that a day in the next pay period was changed to sick leave. Therefore, as appellant has not presented any evidence of error or abuse by the employing establishment in its administration of leave matters, he has not established a compensable employment factor.

Appellant further alleged that he experienced a stress reaction "while trying to do my job efficiently in the short amount of time I was given..." The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.<sup>15</sup> Appellant's job duties consisted of mail delivery for various routes and parts of routes which had anticipated times for completion. The employing establishment acknowledged that, on multiple occasions, appellant did not deliver the mail within the allotted time. Where a claimed disability results from an employee's emotional reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Act.<sup>16</sup> Therefore, appellant has established a compensable employment factor under the Act.

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<sup>10</sup> *Sherman Howard*, 51 ECAB 387 (2000).

<sup>11</sup> *Janet D. Yates*, 49 ECAB 240 (1997).

<sup>12</sup> *Christophe Jolicoeur*, 49 ECAB 553 (1998).

<sup>13</sup> *James P. Guinan*, 51 ECAB 604 (2000).

<sup>14</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>15</sup> *Trudy A. Scott*, 52 ECAB 309 (2001).

<sup>16</sup> *Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

In this case, appellant has established a compensable factor of employment with respect to stress experienced in the performance of his duties as a letter carrier. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>17</sup>

In support of his claim, appellant submitted a report dated May 30, 2002 from Dr. Benitez, an attending Board-certified psychiatrist. He noted that appellant went to the emergency room on February 28, 2002 due to palpitations at work and diagnosed an acute stress disorder. Dr. Benitez further diagnosed an adjustment disorder and anxiety and panic attacks caused by appellant's belief that he was overburdened and unfairly treated.

In a report dated August 6, 2002, Dr. Benitez diagnosed anxiety and panic attacks beginning February 28, 2002 while appellant "was discharging his duties as a mail carrier..." He discussed appellant's allegations that he did not have enough time to deliver his route and also described confrontations with his supervisor over leave matters.<sup>18</sup>

The Board finds that, although Dr. Benitez did not provide sufficient medical rationale explaining how attempting to meet his job requirement of delivering mail within the time allotted resulted in appellant's emotional condition, his reports are generally supportive of appellant's claim and raise an uncontroverted inference of causal relationship sufficient to require further development by the Office.<sup>19</sup> The case, therefore, is remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence. After such further development as the Office deems necessary, it shall issue an appropriate decision on appellant's entitlement to benefits.

### CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>17</sup> See *Dennis J. Balogh*, *supra* note 7.

<sup>18</sup> Appellant further submitted evidence from his attending physician, Dr. Schwarz, a Board-certified internist, who attributed appellant's emotional condition to stress trying to deliver mail within the time allotted by the employing establishment. However, Dr. Schwarz is not a specialist in the field of psychiatry. Office procedures provide that a claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).

<sup>19</sup> *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 18, 2003 is set aside and the case is remanded for further development consistent with this opinion of the Board

Issued: March 10, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
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