



21 hours of annual leave, but was unable to submit this to his supervisors as neither was in the building. Appellant stated that he left a copy of the leave request on the supervisor's desk along with a note affixed to the computer screen. He alleged that on January 10, 2001 he spoke to a night supervisor regarding his leave request and asked that the night supervisor convey the information to the appropriate supervisors. Appellant returned to work on January 15, 2001 and the postmaster informed him that he was considered to be absent without leave (AWOL) on January 10, 11 and 12. Appellant did not receive pay for these dates.

On January 22, 2001 William Graney, a supervisor, informed appellant that he must deliver mail on a route. Appellant protested noting that he had undergone back surgery, had not delivered mail for 12 years and was a vehicle operations maintenance assistant. On January 24, 2001 Mr. Graney and Jeffrey Powers, a supervisor, directed appellant to the supervisor's office and instructed him to sit down in an "abusive and threatening manner." Mr. Graney questioned appellant regarding "Vehicle 8" and when appellant asked which vehicle 8 twice, appellant alleged that Mr. Graney stated, "If you put your hands up again, I will throw you out of the building so fast, the door will hit you in the ass on the way out." Appellant left Mr. Graney's office and returned with union steward Matt O'Brien. Mr. Graney informed appellant that union time was necessary to consult with a steward, he then denied appellant's request for union time and informed Mr. O'Brien that he intended to abolish appellant's job of the past 12 years and repost the exact same job except that the hours and days off would be different. He then stated that appellant could bid for the new job or return to carrying mail.

In a statement dated August 21, 1995, appellant attributed his emotional condition to the actions of Steve Kelly, a supervisor, on August 17, 1995. Appellant alleged that Mr. Kelly threw a key at him pointed his finger and instructed appellant not to get in his way through profanity. On November 16, 1995 appellant reported difficulties with Mr. Kelly regarding leave usage, harassment, threats and intimidation. He alleged on August 1, 1995 that Mr. Kelly screamed at him regarding the location of a truck. Appellant reported on August 9, 1995 that Mr. Kelly failed to order lights for a vehicle as requested.

On June 29, 2000 the employing establishment proposed to remove appellant due to unacceptable conduct regarding contract work he performed for the employing establishment in addition to the vehicle maintenance duties of his regular position in violation of postal regulations. A letter of removal dated September 19, 2000, found that appellant had inflated the cost of materials to decrease the cost of labor in order to distort his income while undergoing a divorce. The postmaster proposed to remove him effective September 22, 2000.

Mr. Powers completed a statement on March 8, 2001 and stated that he did not receive the note that appellant asserted he placed on Mr. Powers' computer on January 10, 2001 addressing his absences. He noted that Lisa Shaw, a supervisor, denied ever speaking to appellant in contrast to appellant's statement that he informed her regarding his plan to use his excess annual leave. Mr. Powers stated that on January 24, 2001 he was sitting in his office a few feet away from Mr. Graney during the discussion with appellant. He stated that Mr. Graney informed appellant that he had been found AWOL for three days and that he asked why appellant had failed to report to work. Mr. Powers asserted that Mr. Graney instructed appellant to lower his voice and calm down, but that appellant became increasingly disruptive. Mr. Powers then instructed appellant to lower his voice and calm down. Appellant did not comply. At that point,

Mr. Graney informed appellant that, if he did not control his behavior, he would have him escorted out of the building. Mr. Powers denied that the employing establishment had unfilled vacancies affecting appellant's workload and stated that no extra demands were placed on appellant.

On March 7, 2001 Mr. Graney stated that he met with appellant on January 24, 2001 to discuss appellant's AWOL. He denied threatening or intimidating appellant. Mr. Graney stated that appellant's behavior was not appropriate and that, after Mr. Powers instructed appellant to calm down and lower his voice, Mr. Graney then informed appellant that if his behavior did not improve he would be escorted out of the building. Appellant reported that he had informed Ms. Shaw, a supervisor, of his leave request the morning of January 10, 2001. Mr. Graney stated that there were no vacancies at the employing establishment that would have affected appellant's workload or performance. He also denied that any extra demands were placed on appellant. Mr. Graney stated that, prior to his arrival at the employing establishment, appellant was removed from the employing establishment and given his job back on "a last chance" agreement at the time he failed to report to work for three days. He noted that Ms. Shaw denied speaking to appellant on January 10, 2001 or at any other time.

The Office requested additional factual and medical evidence by letter dated March 12, 2001. Appellant responded and noted that in February 1995 he returned to work following back surgery and became frightened of Mr. Kelly. He noted that he was only 5 feet 4 inches tall and weighed 150 pounds while Mr. Kelly was 6 feet tall and weighed 260 pounds. On October 19, 1996 appellant combined alcohol and pills and was hospitalized. Appellant then underwent psychiatric treatment, through medication, which resulted in his hospitalization due to a coma. Appellant then underwent additional psychiatric hospitalization and during this period suffered a heart attack.

Appellant's attorney provided a list of 22 persons from the employing establishment who left from October 1999 to October 2000. In support of his claim, appellant submitted newspaper articles dated March 2 and 8, 2000 addressing difficulties at the employing establishment including three empty temporary positions and two full-time positions waiting to be filled.

By decision dated October 18, 2001, the Office denied appellant's claim finding that he failed to substantiate a compensable factor of employment. Appellant requested an oral hearing on October 25, 2001.

On November 2, 2000 appellant entered into a settlement regarding the June 29, 2000 notice of proposed removal. The notice of proposed removal was reduced to a 30-day paper suspension, which would remain on file for 2 years from the date of issuance.

In a statement dated December 12, 2001, a former postmaster, Harry L. Aaron, noted that between 1995 and 1998 there was a great deal of animosity between appellant and Mr. Kelly stemming from an incident that was personal and unrelated to the employing establishment. He stated that he had to constantly speak to Mr. Kelly regarding his treatment of appellant, but that Mr. Kelly carried grudges and at times would go out of his way to make appellant's job more difficult by not communicating with him on vehicle breakdowns.

Appellant testified at the oral hearing on June 18, 2002. He denied that he was on a last chance agreement. Appellant stated that on January 22, 2001 Mr. Graney directed him to carry mail. He alleged that on January 24, 2001 Mr. Graney directed him to the supervisor's office, pointed for him to sit in a chair and proceeded to close all three doors to the office. Mr. Graney began speaking and appellant put his hands up, shrugging his shoulders, appellant repeated the action and Mr. Graney allegedly stated in a loud voice, "If you raise your hands like that again I will throw you through the back f\*\*king door and the door will hit you in the ass on the way out." Appellant then asked the union steward, Mr. O'Brien, to act as a witness. Mr. Graney questioned Mr. O'Brien's presence and informed appellant that he required union time. When appellant requested union time, Mr. Graney denied the request. He then stated that he planned to eliminate appellant's job and that appellant could return to carrying mail.

Martin G. O'Brien, shop steward, also testified regarding the events of January 24, 2001. He stated that appellant reported that he had been involved in an altercation and appeared to be shaken and flustered. Mr. O'Brien reported that appellant told him that Mr. Graney had threatened to throw him through the back door, having the door hit him. He stated that Mr. Powers and Mr. Graney were in the closed supervisor's office and that Mr. Graney informed him that he was going to abolish appellant's current position and repost it with a new day off and new start time. Appellant could then either bid on the new position or bid on a carrier position.

Steve Francis, local union president, testified that appellant's position was not abolished and reposted. Appellant's attending physician, Dr. Alan D. Sirota, diagnosed major depressive disorder and chronic stress. He noted that appellant was afraid of losing his job.

By decision dated April 7, 2003, the hearing representative affirmed the Office's October 18, 2001 decision finding that appellant had not established a compensable factor of employment.

Appellant requested reconsideration on October 3, 2003 and submitted a statement from Robert C. Terelak, a former coworker, dated August 30, 2003. Mr. Terelak stated that he was present and witnessed the January 24, 2001 discussion between appellant and Mr. Graney. He stated that he was standing five or six feet away and overheard Mr. Graney state, "I'm going to take your ass and throw you through those swinging doors and do n[o]t let them hit you on the way out."

Appellant's attorney argued that on January 22, 2001 Mr. Graney had threatened to have appellant's medical restrictions changed so that appellant could return to carrying mail and that Mr. Telelak substantiated that Mr. Graney threatened appellant.

By decision dated January 7, 2004, the Office reviewed appellant's claim on the merits and found that Mr. Telelak's statement was not sufficiently reliable given the gap in time to establish that Mr. Graney made the statement alleged. The Office denied appellant's claim.

### **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 worker's 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>1</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>2</sup>

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act.<sup>3</sup> While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.<sup>4</sup>

Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. Although the Board has recognized the compensability of verbal abuse in certain circumstances this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>5</sup> The Board has held that the mere fact that a supervisor raised his voice during the course of a conversation does not warrant a finding of verbal abuse.<sup>6</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>7</sup>

### ANALYSIS

Appellant attributed his emotional condition to actions by his former supervisor, Mr. Kelly. Appellant alleged threats, harassment and intimidation by Mr. Kelly. In support of his claim, he submitted a statement from Mr. Aaron, a former postmaster, that appellant and Mr. Kelly had a personal animosity and that Mr. Kelly made appellant's job more difficult. While appellant has alleged harassment and submitted a witness's statement regarding the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>3</sup> *James E. Norris*, 52 ECAB 93, 100 (2000).

<sup>4</sup> *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

<sup>5</sup> *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>6</sup> *Carolyn S. Philpott*, 51 ECAB 175 (1999).

<sup>7</sup> *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

difficult relationship with Mr. Kelly and Mr. Aaron did not describe the events or incidents which he believed to be inappropriate action by Mr. Kelly with sufficient specificity to meet appellant's burden of proof in establishing that any incident occurred as alleged by appellant. Vague or general allegations of perceived "harassment," abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act.<sup>8</sup>

Appellant has also attributed his current emotional condition to the denial of leave on January 10, 11 and 12, 2001 and his placement in an AWOL status. While appellant has alleged error or abuse in this personnel matter, he has not submitted the necessary corroborative evidence that the employing establishment erred in finding him AWOL. Mr. Powers and Ms. Shaw denied receiving appellant's oral and written requests for leave on the dates in question. As there is no evidence of error or abuse, appellant has not established that his AWOL status was error or abuse on the part of the employing establishment.<sup>9</sup>

Appellant's attorney alleged that Mr. Graney threatened to force appellant to work outside his medical restrictions or to alter appellant's medical restrictions on January 22, 2001 when he suggested that appellant deliver mail on a route. While being required to work beyond one's physical limitations could constitute a compensable employment factor if the activity is substantiated by the record.<sup>10</sup> The Board notes that appellant has not submitted any evidence or witnesses' statement establishing that the conversation occurred as alleged. Without supportive evidence, the Board finds that appellant's allegation is not sufficient to establish that Mr. Graney indeed requested or suggested that appellant work outside his restrictions. Therefore, this is not a compensable factor of employment.

Appellant also attributed his emotional condition to the discussion with Mr. Graney and Mr. Powers on January 24, 2001. He alleged that Mr. Graney threatened to throw him out of the building so fast that the door would hit him. Mr. Graney denied this remark and instead stated that he informed appellant that he would have him escorted from the building if appellant could not control his behavior. Mr. Powers also denied that Mr. Graney in anyway threatened appellant or raised his voice when informing appellant to control himself or risk being escorted from the building. In support of his October 3, 2003 request for reconsideration, appellant submitted a statement from Mr. Terelak, a former coworker, dated August 30, 2003 substantiating that Mr. Graney threatened to throw appellant through swinging doors. While verbal abuse may be compensable, in weighing the conflicting accounts surrounding January 24, 2001, the Board finds that the more credible and probative evidence is found in the factual recitation in the contemporaneous statements of Mr. Powers and Mr. Graney.<sup>11</sup> As appellant has not submitted any contemporaneous, probative statements regarding verbal abuse by Mr. Graney, the Board finds that he has not substantiated this compensable factor of employment.<sup>12</sup>

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<sup>8</sup> *Beverly R. Jones*, 55 ECAB \_\_\_\_ (Docket No. 03-1210, issued March 26, 2004).

<sup>9</sup> *Joe M. Hagewood*, 56 ECAB \_\_\_\_ (Docket No. 04-1290, issued April 26, 2005).

<sup>10</sup> *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

<sup>11</sup> *Gregory N. Waite*, 46 ECAB 662, 673-74 (1995).

<sup>12</sup> *Joe M. Hagewood*, *supra* note 9.

Regarding Mr. Graney's statement on January 24, 2001 that he planned to dissolve appellant's position, change the schedule and day off and repost the position, the Board notes that Mr. O'Brien, the union steward, testified that this remark was made. Therefore, the Board finds that this statement occurred as alleged. Dr. Sirota, appellant's attending physician, testified that, as a result of the January 24, 2001 discussion with Mr. Graney, appellant was afraid of losing his job. Regarding appellant's allegation that he developed stress due to insecurity in maintaining his position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant has failed to substantiate a compensable factor of employment and that therefore he failed to meet his burden of proof in establishing an emotional condition due to factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 7, 2004 and April 7, 2003 are affirmed.

Issued: August 10, 2005  
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

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<sup>13</sup> See *John Polito*, 50 ECAB 347, 349-50 (1999); *Artice Dotson*, 42 ECAB 754, 758 (1990).