

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

CLYDE R. HOXWORTH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 06-406
Issued: April 12, 2006**

Appearances:
Clyde R. Hoxworth, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 5, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 2, 2005 merit decision denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On August 10, 2005 appellant, then a 51-year-old mail handler, filed a claim alleging that he sustained an emotional condition in the performance of duty. He claimed that Harold Wiseman, a supervisor, constantly harassed and antagonized him, including instances when he stood in the "tugger" work area and caused appellant to alter his path. Appellant asserted that Mr. Wiseman laughed at him and thought it was funny to give him a "higher workload" without providing adequate assistance. He claimed that his tugger work route was a "very hard area" and

alleged that he had the hardest tigger assignment on his work floor. Appellant claimed that Mr. Wiseman threatened him on April 22, 2005 when he talked to him “in a very angry tone with his fists clenched.”¹

In a statement dated August 15, 2005, Mr. Wiseman indicated that appellant was not given any additional duties outside his job description and noted that additional help was sent to his work unit when the work volume increased.

By letter dated August 23, 2005, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted another statement in which he alleged that management allowed workers to reschedule their work schedules on their own without higher approval in contravention of employing establishment procedure. He asserted that the work floor was in such disarray that it was unsafe. Appellant claimed that his work area was the busiest or second busiest area on his floor. He asserted that Mr. Wiseman was incompetent and would laugh and smirk at him while giving him more work. Appellant claimed that Mr. Wiseman was looking for a reason to terminate appellant and his brother, who also worked at the employing establishment. Appellant alleged that Mr. Wiseman disciplined his brother, who is Caucasian, because he then would be able to discipline African-Americans and not be called a racist. Appellant claimed that the workplace was stressful due to the fact that there was a great deal of construction and new machines were replacing old machines.²

Appellant also submitted copies of grievances he filed against the employing establishment in connection with some of his claims regarding Mr. Wiseman.³ In statements from October 2005, Mr. Wiseman indicated that on April 22, 2005 his hands were cupped, rather than clenched, and that he spoke in a loud, but not angry or hostile voice after appellant became upset about complying with an order. Mr. Wiseman indicated that appellant’s reference about “feathers and drums” was to his Native American heritage but did not indicate whether he made the statement attributed to him.

By decision November 2, 2005, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors.

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

¹ Appellant alleged that on other occasions Mr. Wiseman told him to calm down and stated, “I’m going to bring my feather and drums in here and use them on you.”

² Appellant also submitted an August 18, 2005 report in which Dr. Ashwin Joshi, an attending Board-certified family practitioner, discussed his emotion condition.

³ In one of the claims, appellant asserted that on April 22, 2005 Mr. Wiseman stated to him, “If you have a problem with me Hoxworth, you tell me to my face.”

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.⁴ 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.⁵

A claimant 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.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

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.⁸ 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.⁹

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has also alleged that harassment and discrimination on the part of Mr. Wiseman, a supervisor, contributed to his claimed stress-related condition. He claimed that Mr. Wiseman stood in the "tugger" work area and caused him to alter his path, laughed and smirked at him when assigning him work, and made a number of threatening and abusive

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

comments.¹⁰ Appellant claimed that Mr. Wiseman was looking for a reason to terminate him and his brother who also worked at the employing establishment. He asserted that Mr. Wiseman threatened him on April 22, 2005 when he talked to him “in a very angry tone with his fists clenched.”

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant’s performance of his regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹²

Mr. Wiseman denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was subjected to harassment or discrimination.¹³ Appellant alleged that Mr. Wiseman made statements and engaged in actions which he believed constituted harassment and discrimination, but he did not provide sufficient corroborating evidence, such as probative witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁴ With respect to the events of April 22, 2005, Mr. Wiseman acknowledged that he spoke in a loud voice, but indicated that he did not use an angry or hostile voice and was responding after appellant became upset about complying with an order.¹⁵ The Board has held that the mere fact a supervisor or employee may raise her voice during the course of a conversation does not warrant a finding of verbal abuse.¹⁶ Without a detailed description of the specific statements made during the conversation between appellant and Mr. Wiseman, the Board finds that this conversation does not constitute a compensable employment factor.¹⁷ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant also alleged that his work performance was unreasonably monitored by Mr. Wiseman and that management allowed workers to reschedule their work schedules on their own without higher approval in contravention of employing establishment procedure. The Board

¹⁰ For example, he alleged that Mr. Wiseman told him to calm down and stated, “I’m going to use bring my feather and drums in here and use them on you.”

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁵ Mr. Wiseman indicated that his hands were cupped, rather than clenched. There is no evidence that Mr. Wiseman made the actual statements alleged by appellant. Appellant filed a grievance regarding the April 22, 2005 incident, but the record does not contain any final decision finding that Mr. Wiseman committed wrongdoing.

¹⁶ *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

¹⁷ See *Joe M. Hagewood*, 56 ECAB ____ (Docket No. 04-1290, issued April 26, 2005).

finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁸ Although the management of work schedules and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹⁹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁰ However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant generally alleged that Mr. Wise was incompetent and mismanaged the work floor, but the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.²¹

Appellant also claimed that he was given him a "higher workload" without receiving adequate assistance and that he had the hardest tugging assignment on his work floor. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.²² However, appellant did not establish the factual aspect of his claim that he was overworked and did not receive adequate assistance in performing his duties. Mr. Wiseman testified that appellant was not given any additional duties outside his job description and noted that additional help was sent to his work unit when work volume increased.

Appellant asserted that the work floor was in such disarray that it was unsafe. The Board has recognized that unsafe work conditions can constitute a factor of employment, but appellant did not provide any factual support for his claim.²³ He also claimed that his workplace was stressful due to the fact that there was a great deal of construction and new machines were replacing old machines. In addition to the fact that he did not establish the factual element of this allegation, appellant did not adequately explain how such alleged conditions related to the performance of his duties.

¹⁸ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁹ *Id.*

²⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²¹ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

²² See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

²³ See *Peggy Ann Lightfoot*, 48 ECAB 490, 494 (1997).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.²⁴

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 2, 2005 decision is affirmed.

Issued: April 12, 2006
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

²⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).