United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 06-1369**
	)	**Issued: November 14, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Lincoln, NE, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2006 appellant filed a timely appeal from an October 26, 2005 decision of the Office of Workers' Compensation Programs denying his claim for an emotional condition with consequential arrhythmia and March 20 and April 20, 2006 merit decisions on the same issue. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition with consequential arrhythmia in the performance of duty as alleged.

FACTUAL HISTORY

On August 8, 2005 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging that he sustained an emotional condition with consequential paroxysmal atrial fibrillation due to a verbal confrontation with station manager, Tami Adams, on July 20, 2005. He stated that, when he returned to the employing establishment after

delivering his route, Ms. Adams informed him that he could no longer wear his "Z-coil" shoes. Appellant asserted that his physician "already approved the shoes" due to an accepted bilateral ankle condition. He and Ms. Adams "argued about this" and he felt chest pains. Appellant first sought medical treatment on July 25, 2005 from Dr. Timothy Judge, an attending Board-certified internist. He obtained an electrocardiogram (EKG) on July 25, 2005 showing new onset atrial fibrillation with a nonspecific ST wave abnormality, "probably digitalis effect."

Appellant submitted a July 29, 2005 letter, from an employing establishment district manager granting him an exception to a safety policy prohibiting Z-coil shoes. In an August 15, 2005 letter, Jeanette Moser, an employing establishment district manager, advised appellant that she was "compelled to withdraw" the prior approval for appellant to wear Z-coil shoes at work.

In an August 15, 2005 letter, the employing establishment controverted appellant's claim. It asserted that Ms. Adams merely informed appellant of the safety policy prohibiting Z-coil shoes. Appellant then yelled at Ms. Adams. The employing establishment submitted January 12, 2004 national safety policy letters prohibiting employees from wearing Z-coil footwear as the heels were half an inch too tall and the covered coil system posed a tripping and driving hazard.

In an August 18, 2005 letter, Ms. Adams stated that, during a July 20, 2005 unit review, it was brought to her attention that appellant was wearing Z-coil shoes in violation of national employing establishment safety policies. When appellant "returned to the office in the afternoon, [Ms. Adams] informed him that his shoes could not be worn while on the clock. [Appellant] then informed [her] that he had a note from his doctor" permitting him to wear the shoes. A May 10, 2005 note in appellant's personnel file from Dr. Patrick Hurlbut recommended that appellant use Z-Coil footwear while at work for relief of foot and ankle stress. Ms. Adams advised appellant not to wear his Z-coil shoes until further notice. "[Appellant] was very upset" but she did not argue with him. Ms. Adams asserted that, on July 21, 2005, appellant asked Jeff Hoppe, a supervisor, to apologize on his behalf to Ms. Adams for becoming upset the previous day.

In a September 6, 2005 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim. The Office stated that the evidence of record indicated that the July 20, 2005 conversation with Ms. Adams was administrative in nature and, therefore, not in the performance of duty. The Office requested that appellant explain why he delayed seeking treatment for chest pains until five days after the July 20, 2005 incident. The Office also asked that appellant submit all treatment records related to emotional or cardiac conditions and a detailed statement from his attending physician explaining how and why the July 20, 2005 conversation with Ms. Adams would cause the claimed emotional stress and arrhythmia.

In September 8 and 14, 2005 letters, appellant explained that he wore Z-coil shoes at work from late April to July 20, 2005, due to an accepted bilateral ankle condition with subsequent surgeries. He contended that the employing establishment's prohibition of the Z-coil

footwear was an attempt to override his physician's instructions.[1] Appellant noted that, when Ms. Adams spoke to him on July 20, 2005, he was tired after delivering his route and part of another route. Appellant asserted that Ms. Adams yelled at him with the office door open for everyone to hear, causing him physical and mental distress. He alleged that Ms. Adams shouted that she was not putting her neck on the line for him or his shoes. Appellant explained that he was unable to see his physician before July 25, 2005, as there were no earlier appointments available.

Appellant submitted treatment records for emotional and cardiac conditions. In reports from January to March 2002, Dr. Ruth Schmidtmayr, an attending psychiatrist, diagnosed dysthymia related to the bilateral ankle condition and surgery. A January 7, 2005 EKG demonstrated a sinus arrhythmia, a nonspecific ST abnormality, prolonged QT interval and occasional premature ventricular contractions. Cardiac treatment reports from August 8 to September 6, 2005 discuss appellant's history of bilateral iliac aneurysm repair in November 2004 and a history of hyperlipidemia and reduced ventricular systolic function. These reports do not mention the July 20, 2005 incident.

In a September 12, 2005 letter, Dr. Judge stated that "stress, including work[-]related stress, [would] aggravate [appellant's] known heart disease." He noted in a September 27, 2005 letter that appellant had never taken digitalis and that his atrial fibrillation was not caused by any medication. In an October 17, 2005 letter, Dr. Judge stated that appellant had no preexisting cardiac conditions and diagnosed atrial fibrillation with mild left ventricular dysfunction. He opined that work-related stress could potentially aggravate appellant's underlying cardiac problems.

In an October 12, 2005 letter, Ms. Adams contended that the July 20, 2005 discussion was strictly professional and only involved her instruction about the employing establishment's shoe policy and the fact that the Z-coil shoes were unacceptable.

By decision dated October 26, 2005, the Office denied appellant's claim on the grounds that he failed to establish any compensable employment factors. The Office found that the July 20, 2005 conversation with Ms. Adams was an administrative matter that did not occur in the performance of appellant's duties. The Office further found that appellant failed to establish any administrative error or abuse.

[1] Appellant's bilateral ankle condition, processed under File No. 110184025, is not before the Board on the present appeal.

On November 15, 2005 appellant requested a review of the written record by a representative of the Office's Branch of Hearings and Review.[2] He submitted additional evidence.[3]

In letters received from October 31, 2005 to February 3, 2006, appellant alleged that Ms. Adams had an explosive temper and was ordered to undergo anger management training. He noted a November 28, 2005 incident in which she yelled at him to get off the telephone. Appellant contended that unspecified incidents of verbal abuse caused him to seek mental health treatment in January 2005.

In a November 13, 2005 letter, Rod Caughron, a coworker, stated that, on July 20, 2005, he "overheard a conversation between [appellant] and [Ms.] Adams … about [appellant's] shoes. [Ms. Adams] was telling [appellant] that his shoes were not postal regulation shoes. [Appellant] was trying to tell [Ms. Adams] that he ha[d] a [doctor's] note for the shoes and that management was aware of the … note in his personnel files." Mr. Caughron asserted that "[Ms. Adams] became very defensive and started yelling at [appellant] in a very unprofessional and loud manner telling him to get into the office to talk, at the point the office door was closed."

In a January 25, 2006 letter, Ms. Adams again asserted that appellant yelled at her but she did not yell at him.

By decision dated and finalized March 20, 2006, an Office hearing representative affirmed the October 26, 2005 decision, finding that appellant failed to establish any compensable factors of employment. The hearing representative found that appellant established that, on July 20, 2005, he and Ms. Adams had a disagreement regarding his Z-Coil footwear. The hearing representative found that this was an administrative matter not considered to be within the performance of appellant's duties and that no error or abuse was shown to bring the incident under the coverage of the Federal Employees' Compensation Act. The hearing representative noted that Ms. Adams denied yelling at appellant and that appellant apologized to Ms. Adams through another employee on July 21, 2005. The hearing representative found that Mr. Caughron's letter was vague and inconsistent with appellant's statement that Ms. Adams was yelling at him in the office with the door open.

In a March 28, 2006 letter, appellant requested reconsideration.[4] He submitted additional evidence.

[2] On January 14, 2006 appellant filed a claim for a recurrence of disability beginning January 12, 2006 related to the July 20, 2005 incident The Office advised appellant by February 2, 2006 letter that it could not take action on his recurrence claim as the occupational disease claim was not accepted.

[3] Appellant also submitted a September 19, 2005 medical report, November 10, 2005 and January 22, 2006 coworker statements and a November 7, 2005 letter from a relative. None of these documents mention the July 20, 2005 incident. Appellant also submitted copies of evidence previously of record.

[4] Appellant also submitted copies of evidence previously of record.

Appellant submitted February 6 and April 3, 2006 letters about an October 13, 2005 incident in which he alleged Ms. Adams yelled at him about using the telephone. Michael Davidson, a union steward, submitted an April 4, 2006 letter about a general problem with route projections.

In a February 24, 2006 letter, Dr. Schmidtmayr noted treating appellant since March 2002 for work-related stress, with an exacerbation in early 2006. She did not mention a July 20, 2005 incident.

By decision dated April 20, 2006, the Office denied modification of the March 20, 2006 decision finding that appellant failed to establish any compensable factors of employment. The Office found that the July 20, 2005 safety policy conversation was an administrative function of the employer and no error or abuse was shown. The Office noted that the evidence submitted on reconsideration pertained to a separate emotional condition claim[5] for incidents occurring after July 20, 2005.

LEGAL PRECEDENT

The Act provides for payment of compensation for personal injuries sustained while in the performance of duty.[6] Where disability results from an employee's 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.[7] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[8] 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.[9]

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing 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.[10] If a claimant implicates 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.[11]

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[5] File No. 112032210. This claim is not before the Board on the present appeal.

[6] 5 U.S.C. § 8102(a).

[7] 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

[8] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[9] *Effie O. Morris*, 44 ECAB 470 (1993).

[10] *See Norma L. Blank*, 43 ECAB 384 (1992).

[11] *Marlon Vera*, 54 ECAB 834 (2003).

While the Board has recognized the compensability of verbal altercations or abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[12] When sufficiently detailed and supported by the record, verbal altercations may constitute a factor of employment.[13] A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[14]

ANALYSIS

Appellant alleged that he sustained stress and consequential paroxysmal atrial fibrillation due to a verbal altercation on July 20, 2005 with Ms. Adams, a manager. He asserted that Ms. Adams yelled at him within hearing of his coworkers regarding his use of Z-coil shoes at work. Appellant also expressed frustration at the withdrawal of prior approval for him to wear the shoes at work due to an ankle condition. The employing establishment submitted policy documents showing that Z-coil shoes were an unacceptable safety hazard.

Appellant submitted a November 13, 2005 letter from Mr. Caughron a coworker who asserted that, on July 20, 2005, he overheard Ms. Adams informing appellant that Z-coil shoes violated employing establishment safety policies. Ms. Adams then "became very defensive and started yelling at [appellant]" in a loud an unprofessional manner, then escorted him into an office. In August 18, October 12, 2005 and January 25, 2006 letters, Ms. Adams asserted that she did not yell at appellant during the July 20, 2005 conversation but that he yelled at her.

The Board finds that the July 20, 2005 conversation between appellant and Ms. Adams was an administrative safety discussion. The Board has held that a supervisory discussion regarding the safety and appropriateness of footwear worn in the workplace is an administrative matter not considered to be within the performance of an employee's duties.[15] Generally, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.[16] An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.[17]

The Board has recognized the compensability of verbal altercations and abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[18] Verbal altercations and difficult relationships with

[12] *Harriet J. Landry*, 47 ECAB 543, 546 (1996).

[13] *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

[14] *James E. Norris*, 52 ECAB 93 (2000).

[15] *Paul L. Stewart*, 54 ECAB 824 (2003) (the Board found that discussions between the employee and his supervisor regarding the use of safety shoes versus shoe safety shields were administrative in nature).

[16] *Felix Flecha*, 52 ECAB 268 (2001).

[17] *James E. Norris*, *supra* note 14.

[18] *Harriet J. Landry*, *supra* note 12.

supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.[19] In this case, appellant alleged that on July 20, 2005 Ms. Adams yelled at him with her office door open such that coworkers overheard her remarks. Mr. Caughron also asserted that Ms. Adams yelled at appellant during the July 20, 2005 safety discussion. Ms. Adams contended that she did not shout at appellant. The Board thus finds that there is conflicting evidence on this issue. The Board has held that the mere fact that a supervisor raised her voice during the course of a conversation is insufficient to warrant a finding that her actions amounted to verbal abuse.[20] Thus, appellant has not established a compensable employment factor in this regard.[21]

In its September 6, 2005 letter, the Office explained to appellant the type of additional evidence needed to establish his claim. The Office stated the necessity of submitting evidence substantiating a compensable factor of employment, noting that the July 20, 2005 conversation appeared administrative and, therefore, noncompensable absent administrative error or abuse. Appellant, however, did not submit sufficient evidence to substantiate any error or abuse.[22]

Consequently, appellant has failed to implicate any compensable employment factors as a cause for his claimed emotional condition and consequential arrhythmia. As such, the Office properly denied his claim without addressing the medical evidence of record.[23]

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition with consequential arrhythmia in the performance of duty as alleged.

[19] *Marguerite J. Toland*, 52 ECAB 294 (2001).

[20] *Carolyn S. Philpott*, 51 ECAB 175 (1999).

[21] *David C. Lindsey, Jr.*, 56 ECAB ___ (Docket No. 04-1828, issued January 19, 2005).

[22] *Ruthie M. Evans*, *supra* note 8.

[23] Unless a claimant establishes a compensable employment factor, it is unnecessary to address the medical evidence of record. *Gary M. Carlo*, *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 20 and March 20, 2006 and October 26, 2005 are affirmed.

Issued: November 14, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board