

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

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**D.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
North Reading, MA, Employer**

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**Docket No. 08-1532  
Issued: December 19, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 6, 2008 appellant filed a timely appeal from a February 14, 2008 merit decision of the Office of Workers' Compensation Programs denying his emotional condition claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, 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 March 29, 2007 appellant, then a 54-year-old letter carrier, filed a claim alleging that he sustained a psychological injury as a result of harassment by Diane Maskewich, his supervisor, on March 21, 2007.

In a separate statement, appellant described the events of March 21, 2007. He noted that he returned to the mail facility at 5:00 p.m. and was unloading his postal vehicle when Supervisor Maskewich approached him and interrogated him in a gruff, menacing voice about

exceeding his street time. Although appellant answered her, she repeatedly asked him the same question. He noted that he had exceeded his street time by nine minutes. Ms. Maskewich became hostile when he explained why it took more time to handle automated mail. Appellant told her about three instances of finding mail without contents but she did not care and informed him to follow protocol, stamp the mail received without contents and deliver it. When he showed her an empty "Netflix" sleeve without contents on which he handwrote "rec'd without contents," she became agitated and told him that she had previously told him not to write on mail. Appellant contended that his was an appropriate action. He stated that Ms. Maskewich badgered him on the way he separated mail and went through bundles of mail he placed on his ledge. As appellant was placing a mail bundle on the ledge, Ms. Maskewich shouted in a frenzied voice, "give me that." He alleged that she lunged forward, grabbed the bundle out of his hand and hit his hand in the process. Appellant informed her that she had hit his hand. He did not notice that Ms. Maskewich had placed the empty "Netflix" sleeve in his mail tray, which he had picked up with the mail bundle. When appellant told her that her actions were wrong, she told him to punch out. He noted that he was hard of hearing and did not hear what she said. Both Ms. Maskewich and the postmaster instructed him to clock off. Appellant told them that he needed to use the bathroom, but was told to clock off. He punched out, used the bathroom and went back to his workstation to get some paperwork. Appellant heard Ms. Maskewich yell at him to leave the building and go home in an intimidating manner. He was out of work from early October 2006 through December 11, 2007 due to depression and anxiety over Ms. Maskewich's actions. Appellant alleged that Ms. Maskewich created a hostile work environment, that she discriminated against him due to his age and had she harassed and intimidated him daily.

Appellant submitted notes from Merrimac Psychological Services, which indicated that he was totally disabled due to anxiety and depression. In an undated statement, James Connors, a coworker, stated that he had observed Ms. Maskewich harass appellant. He stated extreme pressure had been put on appellant and that he was singled out. Mr. Connors noted that Ms. Maskewich's tone was abusive and demeaning and that she displayed intimidating behavior toward appellant for no obvious reason, whether he was handling mail or going to the bathroom.

In an April 23, 2007 letter, the employing establishment controverted the claim and submitted statements from Ms. Maskewich and Postmaster Leo Scott Murray.<sup>1</sup> Ms. Maskewich noted that she approved overtime for appellant on March 21, 2007 and instructed him to return to the employing establishment by 5:00 p.m. When appellant returned late, she asked him twice for the reason but did not get a response. Ms. Maskewich told the postmaster about appellant's unresponsiveness to her questions as to why he returned late. Appellant showed her a piece of mail he had inappropriately written on, despite instructions not to do so. Ms. Maskewich questioned appellant as to why he wrote on the piece of mail and did not deliver it. Appellant replied that this was the third piece of damaged mail he received. Ms. Maskewich took the piece of mail to photocopy it. She indicated that appellant then began to explain why he was late. When Ms. Maskewich asked additional questions, he became belligerent and argumentative. She instructed appellant to leave, but he ignored her and continued to empty a mail hamper. Ms. Maskewich again instructed him to leave, but he continued to ignore her. The postmaster

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<sup>1</sup> The employing establishment noted that appellant filed a similar claim on October 6, 2006, which was denied.

then instructed appellant to punch out and leave and refused his request for wash-up time. Ms. Maskewich indicated that appellant punched out, went to the men's room, returned to his case to retrieve his sweater and proceeded to leave. However, she saw him back at his carrier case approximately 10 minutes later and had to tell him again to leave the building.

In an April 13, 2007 e-mail, the postmaster stated that on March 21, 2007 appellant returned to the office after 5:00 p.m. Ms. Maskewich came into his office and informed him that appellant would not answer her regarding why he had returned late. When the postmaster went to the workroom floor, Ms. Maskewich was having a conversation with appellant regarding why he wrote on a piece of mail contrary to prior instructions and why he had not delivered the mail. Ms. Maskewich took the piece of mail to make a copy. Mr. Murray stated that appellant was talking in circles in response to Ms. Maskewich's questions. He told appellant to go home for the day. Mr. Murray denied appellant's request for wash-up time and told him to punch out and go home.

In a May 15, 2007 letter, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence.

In a June 12, 2007 response, appellant noted that any witnesses to the March 21, 2007 incident had not come forward. He advised that his union had addressed his grievance about management's denial of his "wash-up time" on March 21, 2007 and the postmaster said no employee would be denied wash-up time in the future. Appellant was diagnosed with manic-depression in 1982, which was in remission since 1987. He contended that he did not require psychiatric care until his treatment by Ms. Maskewich.

In a June 14, 2007 report, Ivan Morgan, Ph.D., a clinical psychologist, advised that he saw appellant on October 12, 2006 for complaints of severe depression due to his supervisor's behavior, which appellant believed was hostile and abusive. He noted that appellant's depression was totally disabling and he was unable to work since March 22, 2007.

By decision dated June 18, 2007, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors.

On June 21, 2007 appellant requested an oral hearing, which was held on November 15, 2007. At the hearing, he alleged that Ms. Maskewich had physically and verbally assaulted him on March 21, 2007. Appellant also alleged that she discriminated against him daily. He stated that Mr. Conner had witnessed Ms. Maskewich's daily behavior towards him. Appellant noted that he could not obtain any witness statements, as people were afraid. He did not file any Equal Employment Opportunity discrimination claims and expressed frustration over the claims process.

Following the hearing, appellant provided a December 9, 2008 letter from a retired coworker, Michael Champagne, who had worked with appellant, while under Ms. Maskewich. He contended that Ms. Maskewich had been abusive to him and that he had witnessed her abusive behavior toward appellant. Mr. Champagne listed instances of harassment of appellant by Ms. Maskewich but did not address the March 21, 2007 incident.

In a December 11, 2007 letter, Ms. Maskewich denied ever assaulting or threatening appellant. She did question him on his daily overruns of both office and street times and his failure to follow instructions.

By decision dated February 14, 2008, an Office hearing representative denied appellant's claim, finding that he did not establish a compensable employment factor.

### **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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.<sup>2</sup> By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>3</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.<sup>4</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>5</sup>

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>6</sup>

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<sup>2</sup> *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>3</sup> *Id.*

<sup>4</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>5</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>6</sup> *James E. Norris*, 52 ECAB 93 (2000); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

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>7</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>8</sup>

### ANALYSIS

Appellant alleged that Ms. Maskewich harassed him on March 21, 2007, when she questioned him about returning late and why he wrote on a damaged piece of mail when he had previously been instructed not to do so. He alleged that his supervisor used a gruff, menacing voice and her demeanor was hostile when he offered explanations. Appellant asserted that she badgered him on the way he had separated mail and went through a bundle of mail. He contended that she physically assaulted him when she reached for the mail bundle he was holding. Appellant was also instructed to punch off the clock and go home, without being allowed to wash up first.

An employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which supervisors exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his duties and that employees will at times dislike actions taken.<sup>9</sup> Furthermore, the Board has held that discussions of job performance by an employee's supervisor, and the monitoring and assignment of work are administrative functions that do not fall under the coverage of the Act absent a showing of error or abuse.<sup>10</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.<sup>11</sup>

Although appellant was questioned on March 21, 2007 by his supervisor about his work habits and performance, he submitted no evidence to establish that Ms. Maskewich erred in the exercise of her supervisory duties in questioning how or directing him to stop work out and leave for the day. The postmaster was present during some of the exchange. He supported that Ms. Maskewich acted properly in questioning appellant and supported her decision to have

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<sup>7</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>10</sup> *See Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>11</sup> *James E. Norris*, *supra* note 6.

appellant go home due to his argumentative behavior and refusal to answer direct questions. Appellant did not submit any evidence, such as a witness statement to support his version of what happened on March 21, 2007. He therefore did not establish error or abuse in this administrative matter.<sup>12</sup>

Appellant alleged that Ms. Maskewich physically and verbally assaulted him on March 21, 2007. He alleged that Ms. Maskewich used a gruff, menacing voice and her demeanor was hostile when he offered explanations for his actions. The Board has generally held that being spoken to in a raised or harsh voice does not in and of itself constitute verbal abuse or harassment.<sup>13</sup> Appellant has not provided any evidence to support that Ms. Maskewich acted abusively towards him during this exchange. He has not established a compensable factor in this regard. Appellant also alleged that Ms. Maskewich physically assaulted him while reaching for the bundle of mail in his hand. Ms. Maskewich specifically denied physically or verbally assaulting appellant on March 21, 2007. Appellant has provided no evidence to establish that this occurred as alleged. Thus, he has not submitted sufficient evidence to establish his claim of abuse.

Appellant alleged that the denial of his wash-up time was a violation of his contract. This is an administrative matter.<sup>14</sup> While appellant alleged that the union had addressed his grievance and the postmaster said no employee would be denied wash-up time in the future, appellant has not provided any documentation concerning the grievance or the ultimate outcome. The record contains no evidence that the employing establishment erred or acted abusively in denying him wash-up time prior to leaving for the day. Accordingly, appellant has not established a compensable factor in that regard.

Appellant premised his claim based on an incident of March 21, 2007 involving Ms. Maskewich. As such, his claim is traumatic in nature as it was attributed to a single workday or shift.<sup>15</sup> The statements from appellant's coworkers generally addressed how Ms. Maskewich had treated appellant over a period of time. The statements are of limited probative value as they are very general in nature. The statements do not establish that the coworkers observed appellant and Ms. Maskewich on March 21, 2007. Appellant submitted no other evidence to establish his allegations. He therefore failed to establish a factual basis for his claim of harassment by his supervisor on March 21, 2007.<sup>16</sup> The record is not sufficient to

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<sup>12</sup> *Kim Nguyen, supra* note 5.

<sup>13</sup> *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

<sup>14</sup> *See Joe M. Hagewood*, 56 ECAB 479 (2005) (the handling of attendance matters are generally related to employment but are administrative functions of the employer and not duties of the employee); *Ernest St. Pierre*, 51 ECAB 623 (2000) (allegations pertaining to irregularity of breaks an administrative matter).

<sup>15</sup> *See* 20 C.F.R. § 10.5(ee).

<sup>16</sup> *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).

establish harassment and suggests that appellant's feelings are self-generated and not compensable under the Act.<sup>17</sup>

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.<sup>18</sup>

**CONCLUSION**

Appellant has not established that he sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 14, 2008 is affirmed.

Issued: December 19, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>17</sup> See *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>18</sup> *Garry M. Carlo*, 47 ECAB 299 (1996); see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).