

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACOB W. BOUSEK and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 98-918; Submitted on the Record;
Issued November 16, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On August 29, 1996 appellant, then a 49-year-old clerk, filed a claim alleging that he developed post-traumatic stress disorder, panic anxiety disorder and a major depressive disorder causally related to an incident of workplace violence occurring on November 10, 1995. In an accompanying statement appellant claimed that on November 10, 1995 at about 9:15 p.m. the security doors were not working to enter the building -- the green light was on but no security badge would release the door. Appellant called the general clerk and told him that he was going to prop the security door open with a wooden block to allow the shift change and the general clerk agreed. However, after appellant had propped the security door open with the wooden block, Lenny Forrester, the supervisor of maintenance, removed the wooden block from under the door. Appellant stated that he told Mr. Forrester they needed to keep the door open to let people in since it would not work with badges and that Mr. Forrester then threw the wooden block in appellant's direction, striking the door near where he was standing hard enough to break off a piece of the wooden block. Appellant then stated "at that time Mr. Forrester turned and walked away with the wooden block. I felt threatened at that point when he threw the wooden block in my direction. I have never had a problem with Mr. Forrester and was shocked at his behavior. The block slammed against the door I was standing by and possibly could have injured me or someone else in that area. This type of behavior by a supervisor should not be tolerated...."

In a November 10, 1995 witness statement, Kevin R. Zeim, a coworker, noted that he passed appellant and Mr. Forrester standing about 15 feet apart having a somewhat agitated discussion concerning the employee entrance door when Mr. Forrester underhandedly threw the wooden door stop hard enough to chip it in a westward direction, then turned and walked away. Mr. Zeim noted that appellant was standing to the west of Mr. Forrester, but he opined that

Mr. Forrester had no intention at all of striking appellant with the wooden door stop, but rather that Mr. Forrester threw the door stop in frustration.

Mr. Forrester provided a November 10, 1995 statement noting that he was paged to come investigate a possible malfunctioning main employee entrance door, that when he went to investigate the nature of the malfunction at 9:20 p.m. appellant came out and placed a wooden chock under the door, that he told appellant that because he was checking the door out appellant was to leave it alone, but that appellant insisted on keeping the door open, arguing "it does not work so leave it open." Mr. Forrester noted that he removed the wooden door stop and because he was annoyed at being prevented from doing his job, ascertaining the true nature of the problem and fixing it before the next tour, he spiked the chock that he was holding in his hand on the floor. Mr. Forrester denied throwing the chock at appellant or intending to throw it at him.

Thereafter appellant filed a union grievance regarding the November 10, 1995 incident, identifying the wooden door wedge as the weapon that was thrown in his direction. Additionally a report to the postal inspection service was made with a finding that "no apparent action was needed at this time."

In a March 27, 1996 letter to appellant, the postal inspection service advised that the incident and statements were reviewed and evaluated and were found to be a noncredible threat. The postal inspector noted that the employing establishment was advised to handle the matter administratively with whatever action they felt was necessary.

By letter dated October 11, 1996, the employing establishment controverted appellant's claim noting that the postal inspector found that the incident was a noncredible threat, that appellant did not seek medical attention following the incident but continued performing his limited-duty position as a door monitor,¹ and that appellant had been under psychiatric treatment since May 1995.

By decision dated November 20, 1996, the Office of Workers' Compensation Programs rejected appellant's claim finding that the evidence of record failed to establish that an injury occurred in the performance of duty. The Office found that the security door developed a malfunction, that the maintenance supervisor was called to determine what the problem with the door was and to fix it, that appellant, a door monitor, did not want Mr. Forrester, a maintenance supervisor, to remove the door stop and that Mr. Forrester stated that he could not determine the problem with the door until the block was removed. The Office found that out of frustration Mr. Forrester removed the door block and threw it down, that postal inspectors were called out to investigate and that they determined that this constituted a "noncredible threat." The Office noted that appellant continued to work his regular limited-duty position and did not seek medical attention until he saw his psychiatrist in December 1995 as a regularly scheduled part of his ongoing psychiatric treatment. The Office found that appellant failed to allow a maintenance supervisor to perform his job and that the ensuing argument was a conduct issue rather than an argument arising out of appellant's job performance, as appellant's job was only to monitor the door and Mr. Forrester's job was to fix the door. The Office found, therefore, that the

¹ Due to his previous tendinitis condition.

November 10, 1995 incident did not arise out of and in the course of appellant's performance of duty.

By letter dated April 5, 1997, appellant requested reconsideration of the November 20, 1996 decision and he argued that he was indeed performing his duties as a gate tender at the time of the workplace incident. He also submitted employing establishment regulations regarding building access and lists of people who were not to be admitted.

By decision dated July 9, 1997, the Office denied modification of the prior decision finding that the evidence and argument submitted was insufficient to warrant modification of the prior decision. The Office noted that appellant's job was to monitor the employee entrance, that Mr. Forrester was called to investigate and repair the malfunction of the door and that the November 10, 1995 incident arose out of an argument which ensued due to appellant's refusal to allow Mr. Forrester to remove the wooden door stop in order to perform the duties of his job. Upon reconsideration the Office noted that appellant argued that it was his job to allow employees entrance to the building, to monitor security cameras and to prevent certain individuals from entering the premises. However, the Office found that the incident involving Mr. Forrester did not arise out of appellant's duties as a gatekeeper as the November 10, 1995 incident did not involve Mr. Forrester being granted or denied access to the building, but arose out of appellant's refusal to allow Mr. Forrester to perform his job of inspecting and repairing the door and therefore did not arise out of and in the course of appellant's duties and was, consequently, not a compensable factor of his employment.

By letter dated November 12, 1997, appellant again requested reconsideration and argued that it was not true that he refused to allow Mr. Forrester to remove the door stop, but argued that in fact Mr. Forrester did remove the door stop and then threw it on the floor which happened to be in his direction, nearly hitting him. Appellant insisted that the incident of November 10, 1995 did not arise out of an argument as the Office had stated, but "arose out of the fact that Mr. Forrester threw a wooden block of wood in my direction out of frustration." Appellant also argued that at the time of the incident he was trying to do his duty because it was the time of the shift change and there were 10 to 20 employees trying to gain access into the building. Appellant argued that this act of workplace violence caused him to develop a bleeding ulcer from peptic ulcer disease and he enclosed two medical reports which noted symptomatic regression with continued obsessions about work.

By decision dated December 8, 1997, the Office denied modification of the July 9, 1997 decision finding that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that Mr. Forrester threw the wooden block out of the way and not at appellant with the intention of hitting him, that the postal inspectors found that it was a noncredible threat and that appellant's perception alone that Mr. Forrester threw the block at him in an attempt to injure him was not established by the evidence of record.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

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 the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁶

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 and which working conditions are not deemed factors of employment and may not be considered.⁷ When a claimant fails to implicate a

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Id.*

⁴ *Donna Faye Cardwell*, *supra* note 2; see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ See *Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁷ See *Barbara Bush*, 38 ECAB 710 (1987).

compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. 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 When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In the present case, the Office properly found that the November 10, 1995 incident was not a compensable factor of employment.

The Board has held that physical contact by a supervisor or by a coworker, or by analogy, contact with an object thrown by a supervisor or a coworker, if substantiated by the evidence of record, may give rise to a compensable factor under the Act if the medical evidence establishes that a condition was thereby caused or aggravated.¹⁰ However, in this case, the evidence of record supports that there was no contact between appellant and the wooden door stop Mr. Forrester tossed on the floor. Further, the factual evidence of record supports that there was no intent to even achieve contact with appellant, as noted by Mr. Zeim in his witness statement and as found by the postal inspectors in their investigation. In fact, the Board notes that the postal inspectors found that there was no credible threat that had occurred in this incident and it was administratively handled. As there was no credible threat made and no contact made, the wooden block tossing incident was not the result of a hostile work environment or a workplace battery and therefore cannot be deemed to have arisen out of and in the course of the performance of appellant's duties on those bases. As the block tossing was not directed at appellant *per se*, as appellant seems to believe, but which is not supported by the witness statement or postal inspector's investigation, but was merely the result of Mr. Forrester's frustration at having appellant interfere with his performing his assigned duties and as it was not the culmination of a workplace altercation but rather more like the punctuation of "somewhat of an agitated conversation" regarding appellant's interference with Mr. Forrester's performance of his own duties and not appellant's duties, it cannot be said to have arisen out of or in the course of appellant's regular or specially assigned duties. Consequently, neither the somewhat agitated conversation regarding Mr. Forrester's supervisory maintenance duties, which appellant clearly states in his several letters was not the cause of his condition, or Mr. Forrester's frustrated spiking of the wooden door stop on the floor in appellant's general direction, arise to the level of compensable factors of appellant's employment.

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

⁹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁰ *Karen E. Humphrey*, 44 ECAB 908 (1993); *Alton L. White*, 42 ECAB 666 (1991); *Constance G. Patterson*, 41 ECAB 206 (1989).

Appellant's last argument that he was attempting to do his duty by attempting to keep the door open to allow access to 10 to 20 employees at shift change is also not supported by factual evidence of record as no evidence was presented that shift change occurred at 9:15 to 9:20 p.m. when Mr. Forrester needed to close the door, particularly in light of Mr. Forrester's statement that he was trying to fix the door before shift change occurred. Therefore, appellant's contentions in this regard are not supported by the record.

As appellant has not implicated a compensable factor of employment in the development of his condition which the evidence supports preexisted the November 10, 1995 incident, the medical evidence of record need not be considered.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated December 8 and July 9, 1997 are hereby affirmed.

Dated, Washington, D.C.
November 16, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member