

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD L. KRZEMINSKI and U.S. POSTAL SERVICE,  
POST OFFICE, Forest Hills, NY

*Docket No. 98-2133; Submitted on the Record;  
Issued April 10, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

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

On July 25, 1996 appellant, then a 44-year-old letter carrier, filed an occupational disease claim, alleging that his emotional condition was due to stress and harassment at work. He had stopped work on June 2, 1996. Following further development, by decision dated February 14, 1997, the Office of Workers' Compensation Programs denied the claim, finding that appellant failed to establish compensable factors of employment. On February 2, 1998 appellant, through counsel, requested reconsideration and submitted additional evidence. In an April 14, 1998 decision, the Office denied modification of the prior decision. The instant appeal follows.

In support of his claim, appellant submitted a statement dated October 2, 1996 in which he alleged that the authoritarian management style of the employing establishment "solely caused" his emotional condition. He noted problems with a number of supervisors<sup>1</sup> who yelled and cursed at him. He alleged that the employing establishment's policies were unsafe and unfair and that it falsified documents. He specifically stated that he was forced to take an intrusive medical examination and had to carry such heavy mail that he injured his back and injured his finger because he was not provided with proper gloves. He stated that he had to contend with abusive customers and had twice been assaulted by customers, including once on August 21, 1993. Appellant also submitted supporting documentation regarding awards received, letters to employing establishment management, congressional offices and union representatives, documentation regarding grievances and medical evidence.

In a March 18, 1996 letter, Jeffrey M. Sprauve, a coworker, complained about the sarcasm and verbal abuse regularly displayed by supervisor Thompson at the employing establishment.

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<sup>1</sup> Appellant specifically identified Peter Anaya, James Means, Kevin Thompson and Kurt Fischer.

With his request for reconsideration, appellant's counsel submitted a pleading in which he further alleged that appellant was "pressured" to perform impossible levels of work, was issued baseless letters of warning and that his personal mail was hidden or discarded. He contended that when appellant complained to management, he was harassed, that he had been physically assaulted by the employing establishment district manager, Nick Squigna, that he was ordered to meet with a postal inspector, improperly banished from the work floor and improperly placed on absence without leave. Finally, he contended that a member of management threatened a coworker with a knife.

By letter dated March 20, 1998, the employing establishment submitted documentation regarding the August 21, 1993 incident, which indicated that appellant had a fight with a customer and was seen by his physician who diagnosed facial contusion and upper back muscle sprain. The employing establishment also submitted two statements obtained by the postal inspector. Robert C. Brehm, a coworker, acknowledged that supervisor Thompson had threatened use of a hammer in what he considered to be "distasteful horseplay" but had not threatened him with a knife. Mr. Brehm noted other problems with Mr. Thompson and further stated, "those things said about Mr. Means by [appellant] may or may not be true, however." Mr. Thompson provided a statement dated August 2, 1996 in which he denied threatening Mr. Brehm with a knife and stated that he had never assaulted him or any worker.

The relevant medical evidence includes a July 13, 1993 report in which Dr. Karl E. Tomlinson, a psychiatrist, noted that appellant was in treatment for a job-related stress disorder and could not work from July 13 to 24, 1993. In a July 30, 1993 report, Dr. Robert Conciatori, a psychiatrist, noted that appellant was under his care for an employment-related anxiety condition. He stated that appellant explained that he was under tremendous stress because his government driver's license had been suspended and, thus, he could not work in his normal activity. Dr. Conciatori recommended that appellant be returned to his usual job duties, which would aid greatly in restoring his emotional stability and allow him to work efficiently. In a September 19, 1996 report, Dr. Conciatori reported a history of harassment by appellant's supervisors over a period of years that caused anxiety, depression, insomnia and inability to concentrate. He stated that appellant reported that his supervisors would "agitate" other employees to throw his mail away intentionally, causing him difficulties in completing his work duties, that he was subject to vile and abuse language from workers and that a knife had been held to his throat by a supervisor. Dr. Conciatori diagnosed adjustment disorder with mixed disturbance of mood, rule-out major depression, rule-out post-traumatic stress disorder and insomnia. Regarding causation, he stated:

"[Appellant] had no prior psychiatric history and symptoms appeared only after the harassment itself. No other stressors are known. Therefore, it is my opinion, within a reasonable degree of medical certainty, that the job harassment is causally related to [appellant's] psychiatric pathology. The diagnosis was formed because [he] developed a maladaptive reaction pattern and impaired functioning due to the stressors of the job. Prognosis is uncertain at this time. Although [he] had a prior episode of job-related stress, it was treated successfully and he returned to full function for over two years until the aforementioned campaign of harassment caused him to suffer a separate, distinct and more severe clinical

entity than he had before. Ideally, if the harassment by the supervisors could be completely eliminated, there is a chance [he] could stabilize and eventually return to work.”

In a September 23, 1996 statement submitted, regarding appellant’s request for disability retirement, Dr. Conciatori noted a history of harassment and verbal abuse by appellant’s supervisors that caused depression, anxiety, insomnia, fear, nightmares and physical symptoms of anxiety such as palpitations, sweating, tremors, abdominal distress and impaired concentration. He diagnosed depressive disorder, generalized anxiety disorder, rule-out post-traumatic stress disorder and advised that appellant was unable to work. Dr. Conciatori stated that if appellant’s depression was unchecked and he returned to work, suicidal ideation could present.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup> Workers’ compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers’ compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees’ Compensation Act.<sup>3</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers’ compensation because it is not considered to have arisen in the course of the employment.<sup>4</sup>

Regarding appellant’s allegations, as a general rule, a claimant’s reaction to administrative or personnel matters fall outside the scope of coverage of the Act.<sup>5</sup>

Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.<sup>6</sup> Similarly, an employee’s complaints about the manner in which supervisors perform supervisory duties or the

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<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

<sup>6</sup> *Gregory N. Waite*, 46 ECAB 662 (1995).

manner in which a supervisor 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 or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.<sup>7</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>8</sup> To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.<sup>9</sup>

Furthermore, for harassment to give rise to a compensable disability under the Act, there must be some evidence that acts alleged or implicated by the employee did, in fact, occur. A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and should not give rise to coverage under the Act absent objective evidence that the interaction with his or her supervisor was, in fact, abusive.<sup>10</sup> The Board has held that investigations are administrative functions of the employing establishment, that do not involve an employee's regularly or specially assigned duties and are not considered to be employment factors.<sup>11</sup> Disputes over leave are generally a personnel matter unrelated to a claimant's assigned duties,<sup>12</sup> and the requirement for physical examinations is an administrative function of the employer.<sup>13</sup>

In this case, while appellant submitted evidence that he intended to file grievances, there is nothing in the record to indicate that he actually filed or, if indeed filed, the outcome. The statements of Mr. Brehm and Mr. Sprauve were general in nature and did not refer to any specific incidents that would substantiate appellant's allegations that he was harassed by management.<sup>14</sup> Furthermore, regarding appellant's general allegation that he was overworked, while overwork can be a compensable factor of employment,<sup>15</sup> in this case, there is no evidence that appellant had difficulty performing his duties in the allotted time and he submitted no specific evidence to substantiate overwork. The Board, however, finds that the assault that appellant sustained on August 21, 1993 is a compensable employment factor. The Board further finds that, while appellant established a compensable employment factor, he did not meet his burden of proof to establish that his emotional condition was work related because he has not

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<sup>7</sup> *Daniel B. Arroyo*, 48 ECAB 204 (1996).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

<sup>10</sup> *Daniel B. Arroyo*, *supra* note 7.

<sup>11</sup> *See Ruth S. Johnson*, *supra* note 8.

<sup>12</sup> *See Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>13</sup> *See generally Alice M. Washington*, 46 ECAB 382 (1994).

<sup>14</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>15</sup> *Robert W. Wisenberger*, 47 ECAB 406 (1996).

submitted rationalized medical evidence explaining how this factor of employment caused or aggravated his emotional condition. By letter dated September 19, 1996, the Office informed him of the type of medical evidence necessary to establish his claim, which was to include a comprehensive medical report from his physician. Drs. Tomlinson and Conciatori advised that appellant's condition was employment related. They did not, however, relate appellant's condition to the 1993 assault, but rather to appellant's allegations of harassment which have been found not to be substantiated by the evidence of record. Thus, appellant failed to meet his burden of proof.

The decision of the Office of Workers' Compensation Programs dated April 14, 1998 is hereby affirmed.

Dated, Washington, D.C.  
April 10, 2000

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member