

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARK J. PIACITELLI and U.S. POSTAL SERVICE,  
POST OFFICE, Redmond, WA

*Docket No. 98-2447; 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 has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On April 19, 1997 appellant, then a 39-year-old supervisor, customer services operations, filed a claim for stress which he attributed to his federal employment. In a statement accompanying his claim, he related that on April 11, 1997 he received a telephone call at home from Linda Smith, the manager of human resources, who informed him that an employee whom he supervised, Mark Jordan, had visited her "hostile and angry" with him. Appellant stated:

"[Mr. Jordan] spoke with [Ms. Smith] and Dr. Picard and voiced that I was the reason for his job[-]related stress and career problems and I was to blame and he would like to see me hurt but [Ms.] Smith would not elaborate to me what he meant by this. She told me that [Mr. Jordan] did not threaten me directly but it raised enough concern for David Braugh of the Inspection Service, Dr. Picard of EAP [Employees' Assistance Program] [and] Arlene Demers (Facility Manager []) [be called] at home and me to be called for my safety. Ms. Smith said she needed to let me be aware of this and as I questioned what else she knew about this, she said because of confidentiality rules she could not say.

"I called Dr. Picard immediately after this and he confirmed all that Ms. Smith had told me. He said it seemed [Mr.] Jordan had been holding his feelings in toward me for some time and that it had come to a boiling point. He said when [Mr.] Jordan seemed to get settled down, then my name would come up and he then became very upset again. Dr. Picard was relieved to hear that I was on annual leave but warned me to be 'aware of my surroundings and what was happening at all times around me because of the situation.' [Dr.] Picard recommended either both or one of us be moved, in order that there would be no contact with each other. He said he would follow up with me after [Mr.] Jordan

went to a scheduled psychiatric exam[ination] on Monday, but failed to call and inform me of the situation before returning to work on Sunday.

“I spoke with Arlene Demers later and she said she spoke with Ms. Smith. She confirmed that per [Ms.] Smith, [Mr.] Jordan had actually threatened to harm me, but could [not] tell me because of the confidentiality.”

Appellant stated that he was “very stressed out” because of the situation and did not want to be reassigned or work in a threatening environment.

By decision dated October 6, 1997, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that he did not establish an injury in the performance of duty. By letter dated October 16, 1997, he requested a review of the written record by an Office hearing representative. By decision dated May 4, 1998, the hearing representative affirmed the Office’s May 4, 1998 decision after finding that appellant had no alleged any compensable factors of employment.

The Board has duly reviewed the case record and finds that the case is not in posture for decision.

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 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.<sup>1</sup> 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.<sup>2</sup>

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>3</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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>4</sup>

Appellant attributed his emotional condition to learning via telephone calls on April 11, 1997 that an employee whom he supervised, Mr. Jordan, was hostile and threatening towards him. The Board has recognized the compensability of physical threats and verbal aggression in certain circumstances.<sup>5</sup> In the instant case, appellant described prior problems with Mr. Jordan on April 1, 1997 when Mr. Jordan refused to work overtime and “became very loud and hostile in his voice and told me he was sick and had to go home, staring at me and leaning over in front of me on my desk.” Appellant indicated that he had previously given Mr. Jordan “corrective action for his attendance problem.” He stated that when he learned that Mr. Jordan had threatened him on April 11, 1997 he “became very concerned about myself and mentally stressed.”

The employing establishment controverted appellant’s claim contending that Mr. Jordan did not present an actual threat to appellant and noted that he was not working at the time he received the telephone call. The employing establishment submitted statements by Dr. Picard and Ms. Smith regarding the incident. In a statement dated April 23, 1997, Dr. Picard verified that he told appellant to be aware of his surroundings due to the situation but stated that he “also explained that Mr. Jordan did not state that he was *going to* or *wanted to* hurt [appellant].” (Emphasis in the original.) Dr. Picard related that he only wanted appellant to have “reasoned concern” rather than alarming him. He stated, “Mr. Jordan, in my estimation, did not make a threat to [appellant]; he did not say that he intended to, would or even might act on his feelings and thoughts.”

In a statement dated May 5, 1997, Ms. Smith related:

“I advised[d] [appellant] that Mr. Jordan had shared his feeling about how he felt about him and that he did not state that he was going to hurt or wanted to hurt him. I never stated that Mr. Jordan was hostile or angry. I did state that Mr. Jordan knew where he lived because I was trying to share that he and [appellant] had a good relationship at one point because he could call him at home, but he never stated that he was going to call him or visit him at home.”

The Board finds that the factual evidence of record supports a determination that appellant received information on April 11, 1997 that Mr. Jordan presented a credible threat of harm to him. In an employing establishment memorandum dated April 28, 1997, Ms. Demers related that Ms. Smith had called her at home on April 11, 1997 to “inform me that employee M[r.] Jordan had made comments to her about feeling like he wanted to hurt [appellant].” Ms. Demers stated that Ms. Smith did not characterize Mr. Jordan’s statements as threats but noted that the inspection service had been called and that Mr. Jordan had been placed on administrative leave pending a medical evaluation. Further, in an electronic mail message dated May 13, 1997,

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<sup>4</sup> *Id.*

<sup>5</sup> See *Alton L. White*, 42 ECAB 754 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

Dr. Picard found that a physician's evaluation of Mr. Jordan was not presently necessary since appellant was not at work and that "there should [not] be a significant concern until they are both going to be at work together." On August 22, 1997 the employing establishment issued Mr. Jordan a letter of removal and indicated that his medical evaluation revealed that he was "a significant risk of violence towards [appellant]." The employing establishment removed Mr. Jordan from employment on September 25, 1997 for failure to conform to the workplace violence policy.

In view of the factual evidence of record, the Board finds that appellant's reaction to learning of Mr. Jordan's hostility towards him cannot be considered self-generated. Dr. Picard confirmed that he told appellant to be aware of his surroundings. His May 13, 1997 electronic mail message supports a conclusion that he considered an encounter between Mr. Jordan and appellant at work to be of "significant concern." Based on Mr. Jordan's comments regarding appellant, officials with the employing establishment reported Mr. Jordan to the inspection service, placed him on administrative leave and referred him for a psychiatric fitness-for-duty examination. As the factual evidence supports that an employee made a credible threat of harm towards appellant, the Board finds that appellant has established a compensable factor of employment. Further, the Board notes that any dispute between Mr. Jordan and appellant does not appear to have been imported by the parties into the workplace from their private lives but rather arose during appellant's performance of his regularly assigned duties as Mr. Jordan's supervisor.<sup>6</sup> Therefore, appellant's reaction to learning that Mr. Jordan threatened him bears a sufficient relationship with his employment to afford coverage. The issue thus becomes whether the medical evidence establishes that this factor contributed to appellant's emotional condition.<sup>7</sup>

As appellant has implicated a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. The case will be remanded to the Office for the preparation of a statement of accepted facts and referral of appellant to an appropriate medical specialist for an opinion on whether he sustained an emotional condition in the performance of duty causally related to a compensable factor of employment. After such further development of the evidence as it considers necessary, the Office shall issue an appropriate decision on appellant's entitlement to benefits.

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<sup>6</sup> See *Janet Hudson-Dailey*, 45 ECAB 435 (1994).

<sup>7</sup> See *Abe E. Scott*, 45 ECAB 164 (1993).

The decisions of the Office of Workers' Compensation Programs dated May 4, 1998 and October 6, 1997 are set aside and the case is remanded for further proceedings consistent with this opinion.

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

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member