

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. LYLE and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 99-1110; Submitted on the Record;
Issued August 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

The Board has duly reviewed the evidence of record and concludes that appellant has not established that he sustained an emotional condition in the performance of duty, as alleged.

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 her 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.¹ 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.²

On November 7, 1997 appellant, then a 47-year-old letter carrier, filed a claim for an emotional condition, Form CA-2, stating that he was subject to "constant daily harassment" and sustained stomach pain, headaches, shaking and had trouble sleeping.

In a medical note dated November 1997, Dr. Michael Taptykoff, an osteopath, stated that he saw appellant "today," "visibly shaken and nervous over an episode at work" that morning. He stated that appellant was being worked up for abdominal pain and that emotional upset could

¹ *Dinna M. Ramirez*, 48 ECAB 308, 312 (1997); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

² *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Lillian Cutler*, 28 ECAB 125 (1976).

be aggravating his condition. In a medical note dated November 14, 1997, Dr. Christine Zador-Silverman, an osteopath, stated that appellant was under her care for abdominal pain. She stated that appellant was being aggravated by his current work situation and would be out of work from November 7, 1997 until approximately December 1, 1997.

In a statement dated November 7, 1997, appellant's supervisor, Raymond F. Borger, described three incidents with appellant on October 17 and 18, and November 7, 1997. He stated that on October 17, 1997 appellant returned from the street 21 minutes late and when he asked appellant why he was late, he stated that "a good supervisor would know" and when informed he was suppose to notify his supervisor in advance when he was late based on a particular code, appellant told him, "I know what you are up to and if I can get two people to come forward I am going to hang your ass." Mr. Borger stated that he felt threatened and gave appellant three direct orders to leave the building which appellant did after the last order.

Mr. Borger stated that, on October 18, 1997, he asked appellant when he would complete his assignment, appellant stated that he did not know and when Mr. Borger came back later to find out, the president of the union approached him and stated that appellant was going home on stress. A meeting was subsequently held and after discussion on both sides, appellant returned to work and finished his assignment.

Mr. Borger stated that, on November 7, 1997, he approached appellant to determine if he would be able to complete his route in eight hours which he did everyday with every employee. Appellant stated that he did not know how much time he would need. Mr. Borger instructed appellant to keep casing his mail and he would stop back later. He returned in 15 minutes and told appellant he would give him office auxiliary assistance. Mr. Borger stated that he was subsequently approached by the president of the union who told him that appellant was thinking of going home due to stress. Mr. Borger provided claim forms to appellant and another employee and interviewed appellant in the cafeteria to obtain information for the forms and to take a statement. He stated that appellant was interviewed by Walter Hackey and went home.

In an authorization for medical attention, PS Form 3956, dated December 3, 1997, appellant stated that he felt intense pain in his right abdomen accompanied by a headache and physical shaking triggered by stress generated by Mr. Borger who had harassed him for months.

By letter dated December 30, 1997, the Office of Workers' Compensation Programs requested additional information from appellant including a description of the employment-related conditions or incidents which he believed contributed to his condition.

In an undated statement received by the Office on January 26, 1996, appellant provided a list of the names of witnesses. He stated that, when he was absent from work away from and Mr. Borger for approximately four weeks, his stomach problem went away but when he talked about Mr. Borger or had to talk to him, it would flare-up again.

By letter dated January 21, 1999, Mr. Borger reiterated that on November 7, 1997 he approached "each and every carrier" as he did everyday to "provide the most efficient assistance, as warranted to complete each route." He stated that appellant advised him that he needed 35 minutes of road assistance to complete his route in 8 hours and he provided office assistance to

appellant “which is the most efficient way.” Mr. Borger stated that, because appellant did not agree with his decision after five minutes, appellant stated that he would need to leave on stress, that appellant completed the necessary forms and left the office.

Mr. Borger stated that appellant had difficulty when supervised.

In an undated statement received by the Office on May 3, 1998, appellant stated that when he first met Mr. Borger, stuck out his hand in a “most mechanical and disinterested manner,” did not look at him and he did not even think Mr. Borger said hello. Appellant stated that, when he suggested that approved music be played on tapes, Mr. Borger complied but 10 minutes later, “Al Glass” told him that Mr. Borger had called him “an asshole.” He also stated that Mr. Borger approached him and asked if he was going to be alright and when he said no Mr. Borger’s eyes widened, his mouth dropped open and his “entire body” recoiled. Appellant also stated that Mr. Borger questioned his count, the leaving time and road time and told people doing part of his route, a false, lower road time.

Appellant alleged that Mr. Borger approached him and asked him if he “would be fine” with his routine and when he “is in trouble” Mr. Borger “lies about the figures and tell him [he does not] have the footage.” Appellant alleged Mr. Borger was “always on the wrong side” with him and that is where the disparity existed. Appellant stated that, on another day, Mr. Borger asked if he started late and when appellant said no, he “started” him about “mail he actually worked.”

Appellant described an incident on a Friday when he arrived 15 minutes late and Mr. Borger was standing at his desk, “coldly staring [him] down” and told him he wanted to see him in his office. Appellant stated that it would have to wait until the next day so he could have his union representative present and Mr. Borger followed him to his case “aggressively castigating” him about his low count and his tardiness. Appellant stated Mr. Borger yelled at him, stating that appellant threatened him using the words, “I [will] hang your ass” and told him to leave. Appellant indicated that he used those words in the context that, if he could prove Mr. Borger’s intention was “to get him,” which a coworker told him Mr. Borger wanted to do, he would “hang [his] ass.” Appellant stated that Mr. Borger’s treatment caused him to shake and his heart to pound. Appellant stated that, in a subsequent meeting in Mr. Borger’s office, Mr. Borger continued to maintain that appellant threatened him and was belligerent.

Appellant also stated that, at the end of the day when he returned to work, Mr. Borger gave him a letter of warning dated “October 29” and that he and the union representative believed Mr. Borger was trying to “cover his mistakes in view of the investigation.” Appellant also stated that the postmaster told him that if he and Mr. Borger had any problems to see her or another supervisor or the union representative.

By decision dated May 15, 1998, the Office denied the claim, stating that appellant did not establish that he sustained an injury as alleged.

In an undated letter received by the Office on October 26, 1998, appellant requested reconsideration of the Office’s decision and submitted additional medical evidence consisting of a letter dated July 30, 1998 from Dr. Zador-Silverman. In her letter, she stated that appellant had

a history of irritable bowel syndrome and that she felt this was certainly exacerbated by his stressful situation at work. In his reconsideration request, appellant stated that Mr. Borger was an alcoholic who had numerous drunken driving convictions in the past few years. Appellant stated that, while he often experienced stress at the employing establishment, Mr. Borger “saw the victim in [him which] brought out the bully in him,” that he made appellant’s “life hell and he enjoyed it” and after months of “torment and stress,” one day the symptoms of stomach pain and heart palpitations did not go away. He stated that Mr. Borger had since left the employing establishment and “things” had been “great” since he left.

By decision dated January 12, 1999, the Office denied appellant’s request for modification, although it stated that the prior decision was modified in that the “fact of injury” was established.

Regarding appellant’s allegations of harassment, the Board has stated that the actions of an employee’s supervisors or coworkers which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.³ However, to support a claim based on harassment, there must be some evidence that the harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.⁴

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁵ The issue is not whether the claimant has established harassment or discrimination under standards applied by the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁶ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁷ A claim based on verbal altercations or difficult relationships with a supervisor must be supported by evidence of record.⁸

In the present case, appellant did not provide sufficient evidence in support of the alleged incidents of harassment, including Mr. Borger’s being cold or rude to him when they were introduced, coldly staring him down at his desk, calling him an “asshole,” yelling at him when appellant was late or had a low count, challenging his mail count, leaving time and road time, being inconsistent or dishonest as to the extent of appellant’s footage, and issuing him a letter of warning. Without such evidence, appellant has not established these incidents as factual to

³ *Michael Ewanichak, supra note 2; Frederick D. Richardson, 45 ECAB 454, 463 (1994).*

⁴ *Michael Ewanichak, supra note 2; June A. Mesarick, 41 ECAB 898, 908 (1990).*

⁵ *Michael Ewanichak, supra note 2; Gregory J. Meisenburg, 44 ECAB 527 (1993).*

⁶ *See Martha L. Cook, 47 ECAB 226, 231 (1995).*

⁷ *Barbara E. Hamm, 45 ECAB 843, 851 (1994).*

⁸ *Diane C. Bernard, 45 ECAB 223, 228 (1993).*

constitute factors of employment or harassment.⁹ Further, the issuance of a letter of warning constitutes an administrative function and as such, appellant must show management acted abusively or unreasonably in issuing him one.¹⁰ Appellant has not made this showing.

Mr. Borger stated in his November 7, 1997 statement that on October 18 and November 7, 1997 he approached appellant to determine if he was going to complete his assignment in eight hours and that he did this with every employee. Mr. Borger's monitoring appellant's work performance relates to the administrative function of the job and therefore only constitutes factors of employment if appellant demonstrates that management acted abusively or unreasonably.¹¹ Appellant did not meet his burden in this regard.

Mr. Borger's November 7, 1997 statement and appellant's statement establish that they had a disagreement where appellant stated that he would "hang [Mr. Borger's] ass." He alleged that Mr. Borger threatened him and, in response, Mr. Borger told him to leave. Mr. Borger's action pertains to an administrative matter and would not constitute a factor of employment unless management acted abusively or unreasonably. Appellant has not established Mr. Borger's action of telling him to leave after appellant swore at him was not abusive or unreasonable.

Inasmuch as appellant has not established that the alleged incidents constituted factors of employment, he has not met his burden of establishing that he sustained an emotional condition in the performance of duty. Since no compensable factors have been established, it is not necessary to address the medical evidence.¹²

⁹ See *Mary L. Brooke*, 46 ECAB 266, 275 (1994).

¹⁰ See *Barbara J. Nicholson*, 45 ECAB 803, 809 (1994).

¹¹ See *Daryl R. Davis*, 45 ECAB 907, 911 (1994).

¹² See *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

The decisions of the Office of Workers' Compensation Programs dated January 12, 1999 and May 15, 1998 are hereby affirmed.

Dated, Washington, D.C.
August 4, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member