

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSE J. STARCHER and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 98-1201; Submitted on the Record;
Issued January 31, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an emotional condition while in the performance of duty.

On February 26, 1996 appellant, then a 51-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he sustained an emotional condition in the performance of duty. He explained that on the morning of February 26, 1996, the station manager, Tim Grant, harassed him and, as a result, he experienced stress. Appellant did not stop working at the time of the alleged incident. In support of his claim, appellant submitted a February 29, 1996 report from Dr. Conrad P. Weller, a Board-certified psychiatrist and neurologist. Dr. Weller diagnosed adjustment disorder with anxiety, and he attributed this condition to appellant's employment. He specifically noted that appellant's symptoms started on February 26, 1996, immediately following a traumatic interaction with his station manager.

By letter dated August 9, 1996, the Office of Workers' Compensation Programs requested that appellant submit additional factual information regarding the alleged incident of February 26, 1996. In a statement dated August 21, 1996, appellant indicated, among other things, that, on the date in question, Mr. Grant singled him out while having a conversation with two other carriers. Appellant stated that he was just walking by at the time and Mr. Grant brought him into the conversation. Additionally, appellant stated that he checked with both of the other carriers, but neither carrier seemed to remember anything. He further indicated that Mr. Grant had singled him out on several other occasions for filing grievances against him for constant harassment. He described Mr. Grant as vindictive and a smart aleck.

By decision dated February 7, 1997, the Office denied appellant's claim on the basis that the evidence of record failed to establish that an injury was sustained as alleged. In an accompanying memorandum, the Office explained that, while appellant alleged harassment on

the part of his station manager, appellant provided only a vague statement and was unable to provide any witness accounts of the alleged incident.

On February 27, 1997 appellant's representative requested an oral hearing before an Office hearing representative. At the September 23, 1997 hearing, appellant and his psychiatrist, Dr. Weller, testified. Dr. Weller provided testimony regarding appellant's emotional condition. He explained that, based on the history provided by appellant, the diagnosed condition of adjustment disorder with anxiety was related to appellant's employment. Dr. Weller further noted that appellant was not disabled by this condition. With respect to appellant's testimony, he described a pattern of harassment and intimidation by Mr. Grant which allegedly began in early February 1996, shortly after appellant had filed a grievance regarding Mr. Grant's performance of work outside of his assigned duties. Regarding the alleged incident of harassment on February 26, 1996, appellant explained that as he passed by an ongoing conversation between Mr. Grant and at least two other employees, Mr. Grant stated: "[Appellant] fits right in with that pattern." Although appellant admitted that he had no idea what the conversation was about or what Mr. Grant meant by his remark, appellant assumed that in the context of their prior relationship, Mr. Grant made this remark with the intent to harass and intimidate him. Appellant also testified regarding subsequent incidents of harassment by Mr. Grant and another supervisor. These latter incidents, however, formed the basis of two occupational disease claims that had since been denied. Appellant testified to having filed at least 12 Equal Employment Opportunity complaints (EEO) and various other grievances regarding his employment conditions. He indicated that the grievance filed with respect to the alleged incident of February 26, 1996 had yet to be resolved.

At the hearing, appellant also submitted a statement from Mr. Larry Reeves, a coworker. In brief, Mr. Reeves indicated that appellant had been singled out by management since filing a grievance against Mr. Grant in February 1996. Additionally, appellant submitted a January 28, 1997 memorandum from an employing establishment physician summarizing the results of appellant's January 23, 1997 psychiatric evaluation. The report indicated, among other things, that appellant was capable of performing his regular duties and was not a hazard to himself or others. Finally, appellant submitted a letter of recommendation from one of his postal customers.

Subsequent to the hearing, the employing establishment submitted a number of documents pertaining to unrelated disciplinary actions initiated against appellant both prior and subsequent to the alleged incident of February 26, 1996. The employing establishment also submitted a statement from another of its employees, Judy Del Regno, a licensed clinical social worker and coordinator of the Employee Assistance Program. Ms. Regno described a conversation between herself and Dr. Weller concerning appellant's condition and fitness for duty. Additionally, Mr. Grant submitted a statement dated November 6, 1997, in which he characterized appellant as a renowned "hot head" with a very short fuse. He also stated that appellant was prone to having temper tantrums. Additionally, Mr. Grant provided a chronology of disciplinary actions taken against appellant for his behavior. While he described a February 14, 1996 incident where he was called upon to discipline appellant, Mr. Grant did not provide any specific details regarding the alleged incident of February 26, 1996.

In a decision dated December 30, 1997 and finalized on January 2, 1998, the Office hearing representative denied appellant's claim on the basis that he failed to demonstrate that he sustained an emotional condition in the performance of duty. The hearing representative explained that appellant failed to provide evidence in support of his allegation that he was harassed in any way by Mr. Grant. Furthermore, with respect to the alleged incident of February 26, 1996, the hearing representative noted that appellant admitted he was unaware of what Mr. Grant and the other employees were talking about at the time Mr. Grant made his remark to appellant. As such, the hearing representative explained that appellant's mere perception that the remark was inappropriate was an insufficient basis upon which to consider this incident a compensable factor of employment. Accordingly, the hearing representative affirmed the Office's February 7, 1997 decision.

The Board finds that appellant has failed to establish that he sustained an emotional condition while in the performance of duty.

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview 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 is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.³

In the instant case, appellant has failed to submit probative and reliable evidence in support of his allegation of continuing harassment by Mr. Grant. Appellant alleged that the harassment commenced in early February 1996, shortly after he filed a grievance against Mr. Grant for doing craft work. He further alleged that one incident in particular, which occurred on February 26, 1996, caused a traumatic stress injury. The Board has held that for harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable.⁴ The allegations

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

of harassment must be substantiated by reliable and probative evidence.⁵ The Board has also recognized the compensability of verbal altercations or abuse in certain circumstances.⁶ However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.⁷ When sufficiently detailed and supported by the record, verbal altercations may constitute a factor of employment.⁸

Appellant alleged that Mr. Grant began to closely scrutinize his work shortly after he filed a grievance in early February 1996. Larry Reeves, a coworker and shop steward, characterized this scrutiny as "beyond normal observation." He further indicated that this was done in an effort to intimidate and harass appellant. Mr. Reeves, however, did not provide any specific dates or described instances of excessive scrutiny on the part of Mr. Grant. While it is clear that both appellant and Mr. Reeves believe that the level of supervision employed by Mr. Grant was excessive; this alone is insufficient to characterize Mr. Grant's actions as either harassment or intimidation. The lack of specificity regarding this perceived pattern of harassment undermines appellant's allegations.

With respect to the alleged traumatic incident of February 26, 1996, appellant testified as follows: "Mr. Grant was involved in a conversation with three other carriers,⁹ and as I walked by ... he threw me in the middle of their conversation in order to try to intimidate me to say something or intimidate me to blow up or intimidate me in any way, shape or form." Appellant further indicated that he had "no idea what their conversation was about" and had "no idea why [Mr. Grant] was throwing [his] name in." Appellant quoted Mr. Grant as saying: "[Appellant] fits right in with that pattern."

Appellant admittedly did not know the subject matter of the conversation, and therefore did not know the context in which Mr. Grant had referred to him on February 26, 1996. Additionally, according to appellant's August 21, 1996 statement, the "two other carriers" involved in the conversation did not recall the incident when questioned by appellant. Under these circumstances, the specific remark attributed to Mr. Grant does not rise to the level of either harassment or verbal abuse. Furthermore, while appellant indicated that he filed several grievances and EEO complaints against Mr. Grant for his alleged harassment, there is no evidence that Mr. Grant was found to have acted improperly. In the absence of probative and reliable evidence, appellant's mere perception that Mr. Grant's remark was inappropriate does not bring this incident into the realm of compensable employment factors. Consequently, appellant has failed to establish that he was harassed by Mr. Grant either prior to or on February 26, 1996, and thus, has failed to establish a compensable factor of employment.

⁵ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

⁶ *Harriet J. Landry*, 47 ECAB 543, 546 (1996).

⁷ *Id.* at 547.

⁸ *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

⁹ In an earlier statement dated August 21, 1996, appellant indicated that Mr. Grant was involved in a conversation with "two other carriers."

Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.¹⁰ Inasmuch as appellant failed to implicate any compensable factors of employment, the Office hearing representative properly denied his claim without reaching the medical evidence of record.

The decision of the Office of Workers' Compensation Programs dated December 30, 1997 and finalized on January 2, 1998 is hereby affirmed.

Dated, Washington, D.C.
January 31, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

¹⁰ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).