

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL F. FOX and U.S. POSTAL SERVICE,
ALTOONA MAIN POST OFFICE, Altoona, PA

*Docket No. 99-1417; Submitted on the Record;
Issued November 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

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

On June 5, 1998 appellant, then a 43-year-old letter carrier, filed a notice of occupational disease alleging that he sustained "stress and anxiety" due to "harassment" at work from February 1997 to June 2, 1998.¹ The Office of Worker's Compensation Programs denied appellant's claim by decision dated January 14, 1999, on the grounds that he failed to establish a compensable factor of employment. The Office accepted as factual that, on January 7, 1997, appellant asked an armed state trooper to leave the employing establishment; he was subsequently suspended and filed a grievance. However, the Office found that these were administrative actions not arising in the performance of duty. The Office also accepted that appellant "feared for his job following his suspension," but found such fears were not compensable. The Office further found that appellant did not establish as factual an April 10, 1997 confrontation with Charles Burford, an employing establishment postmaster; that he was threatened by a "man with a gun on the street" on May 7, 1997 or that he was "intimidated and bullied by management."

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

In this case, appellant alleged that he sustained a disabling emotional condition due to factors of his federal employment. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. A claimant's perceptions and feelings regarding work factors, in the absence of corroborating evidence, are not compensable.² When working conditions are alleged as factors in causing

¹ Claim No. 03-0235939. In a July 2, 1998 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim, including witness statements corroborating his account of the alleged events.

² *Ruthie M. Evans*, 41 ECAB 416 (1990).

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.³ When a claimant fails to implicate a compensable factor of employment, as in this case, the Office should make a specific finding in that regard.

Appellant attributed his emotional condition, in part, to disciplinary actions related to a January 7, 1997 incident in which he told a uniformed Pennsylvania state trooper, who had come to the employing establishment to verify an address in order to serve a criminal subpoena, that he could not go onto the workroom floor with his gun and directed him off the premises.⁴ Appellant stated that on January 8, 1997, Bob Hammaker, a supervisor, ordered appellant “to stop challenging people entering the facility,” which upset appellant, who medical treatment.⁵ On February 5, 1997 the employing establishment issued appellant a seven-day suspension, noting a regulation specifically permitting “recognized law enforcement officers ... to carry a firearm on postal property.”

The Board finds that the January 8, 1997 discussion with Mr. Hammaker and the February 5, 1997 suspension were administrative matters unrelated to appellant’s regular or specially assigned work duties and do not fall within the coverage of the Act.⁶ Disciplinary actions are administrative functions of the employer, and not duties of the employee.⁷ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁸ Appellant has not submitted sufficient evidence in corroboration of his claim to establish that the employing establishment erred or acted abusively with regard to the disciplinary discussion or the subsequent suspension.

³ See *Barbara Bush*, 38 ECAB 710 (1987).

⁴ In a February 7, 1997 letter, Scott Ellis, an employing establishment official, noted that, at approximately 11:00 a.m. that day, appellant requested to be taken to his doctors for stress related to the state trooper incident, “security and safety” and “his pending suspension.” Appellant also stated his intention to file a compensation claim for stress. Appellant filed a safety report on January 10, 1997, stating that the building was “not secure,” as patrons had “access to vehicle keys and mail on racks,” and that “persons carrying guns” had access to the entire building, and that the public “threaten[e]d employees.”

⁵ The January 7, 1997 letter of suspension charged appellant with “improper conduct toward a postal customer” for confronting “a Pennsylvania State Police Trooper, who, in full uniform, entered [the employing establishment to check] ... an address for service of a subpoena in a criminal case. Upon entering the [employing establishment], the Trooper was advised by [appellant] that he was not to wear his weapon on the premises and told to leave the building. The Trooper did as instructed ... and ... the subpoena went unserved.” The employing establishment noted a regulation specifically permitting recognized law enforcement officers to carry a firearm on postal property and that appellant had no authority to confront the trooper.

⁶ See *Jimmy Gilbreath*, 44 ECAB 555 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁷ *Id.*

⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

Appellant also alleged that, on October 22, 1997, Postmaster Burford spoke to him in a “harsh and abusive manner,” accused him of “wasting time,” ordered him not to leave then physically blocked him from leaving the vehicle dock, followed him across the workroom floor to the time clock, and threw appellant’s keys at him. Appellant then spent the night in the hospital, was off work for two and a half weeks, and was placed on medication. While appellant did submit two witness statements related to the October 22, 1997 incident, neither witness heard anything Mr. Burford said to appellant, or saw him block appellant from leaving, follow him or throw keys.⁹ Thus, appellant submitted insufficient evidence to establish this incident as factual.

Appellant also attributed his claimed emotional condition to the following alleged incidents: Mr. Burford tried to keep appellant out of meetings related to his grievance;¹⁰ on March 31, 1997, while speaking with a union representative regarding his grievance, Mr. Meredith suspended appellant and threatened to fire him; on April 10, 1997 Mr. Burford confronted and “stared” at appellant while outside on a smoking break, and interrupted appellant when he consulted Mr. Meredith; on May 7, 1997 a man with a gun approached him on the street and twice threatened to shoot appellant as the postal service had “lost his driver’s license;” Mr. Burford would not let appellant speak at a May 29, 1998 safety talk;¹¹ on June 1, 1998 appellant alleged that, while he was on union business, Mr. Meredith repeatedly yelled at appellant and another carrier to “kiss his a**,” then walked behind appellant yelling “you [a]re fired, you [a]re suspended, you [a]re terminated, you [a]re removed.”¹² While appellant submitted various grievance forms and incident reports reiterating his allegations, he did not submit witness statements or other documentation corroborating his allegations. Thus, as appellant submitted insufficient evidence to establish these incidents as factual, they cannot be considered as factors of employment.

Regarding appellant’s allegation that he felt “overwhelmed, fearful, bullied, intimidated and threatened” due to harassment by his supervisors, the Board has long held that, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative

⁹ In a December 7, 1997 letter, Randy Oakes, a coworker, stated that, on October 22, 1997, he saw appellant and Mr. Burford on the vehicle dock, but could not hear what was said due to distance and noise from machinery and a radio. In a December 7, 1997 letter, Susan Richardella, a coworker, noted that appellant telephoned her during the October 22, 1997 encounter with Mr. Burford, and noted seeing appellant, Mr. Burford and their vehicles near the employing establishment after the alleged incident. In an October 22, 1997 incident report, Mr. Meredith stated that appellant claimed “stress and anxiety” due to being “harassed and threatened by ... [Mr.] Burford,” who charged appellant with “insubordination because he was trying to get away from him.”

¹⁰ In a February 12, 1997 letter, Michael J. O’Connor, a union steward, alleged that Mr. Hammaker, a supervisor, did not want appellant to attend a step one grievance meeting “because it will be pushed to step 2.”

¹¹ In a June 3, 1998 accident report, Mr. Meredith noted appellant’s allegations of “unresolved issues dating back to February 1997” causing “stress and anxiety. [Appellant] claims he has been harassed by Postmaster Burford on May 29, 1998 during a safety talk when he interrupted Mr. Burford and on June 1, 1998 when [Mr. Meredith] ... his supervisor got into a discussion about union matters.”

¹² The record contains a June 9, 1998 grievance worksheet regarding the alleged June 1, 1998 incident with Mr. Meredith. There is no final determination of record concerning this grievance. The record also contains a fragment of an Equal Employment Opportunity Commissions complaint, but no final determination.

of whether such harassment or discrimination occurred.¹³ In this case, appellant did not submit sufficient evidence to corroborate his accounts of harassment. As noted above, the only incident established as factual, though not compensable, is that appellant ordered an armed state trooper to leave the employing establishment on January 7, 1997, and was subsequently suspended. Appellant failed to submit evidence to corroborate any of the other incidents of alleged harassment. Therefore, the Board finds that appellant has not established that he was harassed by the employing establishment.

Appellant also attributed his emotional condition due to stress from his fear of losing his job following the February 1997 suspension. However, the Board has held that fear of job loss is not compensable.¹⁴

Consequently, appellant has failed to establish that he sustained an emotional condition in the performance of duty, as he did not establish any compensable factor of employment.¹⁵

The decision of the Office of Workers' Compensation Programs dated January 14, 1999 is hereby affirmed.

Dated, Washington, DC
November 8, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹³ See *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹⁴ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹⁵ As appellant failed to establish a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Gary M. Carlo*, 47 ECAB 299, 305 (1996).