

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JON BICKFORD and U.S. POSTAL SERVICE,  
POST OFFICE, Portland, ME

*Docket No. 00-263; Submitted on the Record;  
Issued August 3, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an angina attack on September 4, 1997 in the performance of duty, as alleged.

On September 8, 1997 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that on September 4, 1997 he sustained an angina attack caused by stress when he requested carrier assistance from his supervisor. On the reverse side of the claim form, Mike Stackpole, appellant's supervisor, indicated that appellant first received medical care on September 4, 1997 from the Maine Medical Center. He stated that appellant became hostile when questioned about his work performance and his request for auxiliary assistance.

In a statement dated September 4, 1997, Mr. Stackpole noted that appellant requested assistance with his mail delivery route so that he could leave work by 3:00 p.m. that day, his regular departure time. He advised appellant that he should not need to work an hour later than his scheduled shift because his mail volume did not warrant the extra time. Mr. Stackpole alleged that appellant became upset, yelled at him and requested that his mail be recounted. He also alleged that appellant stated that he was going home sick. Mr. Stackpole advised appellant to obtain medical authorization for sick leave and that he refused appellant's request to take him to a physician.<sup>1</sup>

In a statement dated September 21, 1997, Barry Galuska, a supervisor, noted that on September 4, 1997 he approved appellant's carrier assistance request because appellant began to case his route 30 minutes prior to his usual start time and was slightly above his reference volume of mail. Mr. Galuska stated that Mr. Stackpole agreed with granting carrier assistance to appellant; however, Mr. Stackpole questioned appellant's effectiveness and productivity.

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<sup>1</sup> Appellant submitted a patient discharge summary dated September 5, 1997 and a note from Dr. John Moore Stedman stating that appellant could return to work. He also submitted an appointment confirmation note dated September 9, 1997 from Maine Cardiology Associates.

Mr. Galuska described a conversation between appellant and Mr. Stackpole regarding appellant's carrier assistance request during which appellant appeared flustered, raised his voice, and became angry. He noted that appellant alleged that he had at least 14 feet of mail to deliver but Mr. Stackpole disagreed with that assertion. Subsequently, appellant demanded that Mr. Stackpole recount his mail and slammed his mail trays on the floor. The recount showed that appellant had approximately 11 feet of mail. Mr. Galuska stated that Mr. Stackpole advised appellant that, if he went home sick, he should provide medical documentation upon his return to work. He later heard appellant state that he was denied "treatment."

By letter dated December 9, 1997, the Office of Workers' Compensation Programs informed appellant that the evidence submitted to support his claim was insufficient and requested additional factual and medical evidence.

Appellant submitted a September 4, 1997 report in which Dr. Jeffrey A. Rosenblatt, a Board-certified internist, diagnosed presumed unstable angina. Dr. Rosenblatt noted that appellant developed progressive severe mid-precordial chest pressure following an argument with his supervisor. He also noted his objective findings and appellant's complaints.

In a statement dated December 18, 1997, appellant noted that he previously slipped and fell on an icy porch, sustaining a herniated disc and alleged the employing establishment "demonstrated zero tolerance for limited-duty letter carriers." He alleged that he was harassed by management, denied overtime work and was called "lame," "lazy" and "bum" by various supervisors. Appellant asserted that a cardboard box with a cutout door and sign stating "limited duty lunch and break room" was placed outside by a dumpster. He alleged that a supervisor told him to "go out and sit in the corner and watch paint dry" and that his leave requests for his daughter's wedding were refused for a year.

Appellant alleged that, on September 4, 1997, Mr. Stackpole stuck his finger in appellant's face and stated that he would change appellant's start time from 6:30 a.m. to 7:00 a.m. He noted Mr. Stackpole disagreed over the amount of mail appellant was assigned to deliver that day and appellant dropped the mail to the floor and told him to "count the fucking mail again." Appellant alleged that he entered the employing establishment office, stated that he was having chest pains, and requested immediate medical attention. He alleged that Mr. Stackpole denied his request and he subsequently drove himself to Brighton Medical Center and was later transferred and admitted to Maine Medical Center.

In a statement dated April 1, 1998, Barry Vayo, a supervisor, noted that, during the time he supervised appellant, he asked if appellant was able to perform his duties and provided him with a job within his restrictions. Mr. Vayo stated that appellant was granted "plenty of overtime." Regarding the cardboard box, he stated:

"[Appellant] brought charges against me at the time it happened. The EEO [Equal Employment Opportunity] person, Marc Scheele, spoke to me at that time. No fault was found to blame the [employing establishment]. It was a prank played on Dan Grayson by other carriers. When I saw it I had the janitor remove it from the building. [Appellant] saw the box before it could be broken down for the dumpster, as it was too large to fit inside."

In a statement dated May 15, 1998, Mr. Stackpole indicated that he did not deny appellant overtime due to his limited-duty restrictions. He stated that he heard Don Cote, a supervisor, call appellant "lame and lazy," but only among other supervisors. He noted that Mr. Cote had told appellant to "go sit in the corner and watch the paint dry." Regarding the cardboard box, Mr. Stackpole stated that it was placed by appellant's peers at the dumpster and was removed by a supervisor.

By decision dated August 14, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he was injured in the performance of duty. The Office found that the employment factors cited by appellant, including his confrontation with his supervisor on September 4, 1997, various name calling by coworkers and supervisors, and the placement of the cardboard box stating, "limited duty lunch and break room," were personnel and administrative matters.

By letter dated September 3, 1998, appellant requested an oral hearing before an Office hearing representative.

At the oral hearing held on May 25, 1999, appellant's representative argued that the employing establishment erred because it failed to transport appellant for medical care when he sustained an angina attack and, therefore, increased his stress level.

Appellant testified that his request for one hour of carrier assistance was approved by Mr. Galuska but Mr. Stackpole screamed and stated that he would not receive help. He testified that when he advised Mr. Stackpole that he was feeling ill, Mr. Stackpole told him to go into the office. Appellant stated that his request infuriated Mr. Stackpole. He testified: "He came back in my face again, shaking his finger, screaming and hollering at me, telling me that I was not going to get the help." Appellant alleged that Mr. Stackpole also stated that he was changing his start time.

Appellant alleged that he experienced chest pains, felt scared and communicated his condition to Mr. Stackpole. He testified that he requested transportation to the hospital but that Mr. Stackpole told him to drive himself.

By decision dated August 18, 1999, the Office hearing representative affirmed the Office's August 14, 1998 decision, finding that the evidence of record failed to establish that appellant sustained an injury on September 4, 1997 in the performance of duty.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

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 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>2</sup> Not all requirements of employment constitute compensable factors of employment. Those that are administrative in nature and do not relate to the duties that the employee was hired to perform are not compensable.<sup>3</sup> The Board has held, however, 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.<sup>4</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>5</sup> Mere perceptions of error or abuse are not sufficient to establish entitlement to compensation.<sup>6</sup>

Appellant alleged that his angina attack was caused by stress resulting from the September 4, 1997 employment incident. Subsequently, he expanded his claim to include harassment and name calling by his supervisors, denial of overtime work and denial of leave for his daughter's wedding.

The Board finds that the September 4, 1997 employment incident and denials of overtime work and leave are not sufficiently related to appellant's regular or specially assigned duties and, therefore, do not constitute compensable employment factors.

According to Mr. Stackpole's September 4, 1997 statement and appellant's December 18, 1997 statement, the September 4, 1997 employment incident involved appellant's request for carrier assistance. While the assignment of work duties and the assessment of work performance or conduct are generally related to employment, they are administrative functions of the employer and not duties of the employee.<sup>7</sup> The Board has held that, as a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act.<sup>8</sup>

Appellant and Mr. Stackpole disagreed about the amount of mail that appellant was assigned to deliver that day. At the May 25, 1999 oral hearing, appellant testified that Mr. Stackpole screamed, shook his finger and denied his request for assistance. Mr. Stackpole's September 4, 1997 statement alleged that, when appellant requested assistance with his route, he advised appellant that the assigned mail volume did not warrant extra time and appellant became upset, yelled and requested that his mail be recounted. In a statement dated September 21, 1997, Mr. Galuska noted that Mr. Stackpole agreed with granting appellant's assistance request but had questioned appellant's effectiveness and productivity. He also noted that appellant became angry, raised his voice, and slammed his mail trays to the floor.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Bettina M. Graf*, 47 ECAB 687 (1996).

<sup>4</sup> *Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>5</sup> *Id.*

<sup>6</sup> *Janet I. Jones*, 47 ECAB 345 (1996).

<sup>7</sup> *Elizabeth W. Ensil*, 46 ECAB 606 (1995).

<sup>8</sup> *Bernard Snowden*, 49 ECAB 144 (1997).

The December 18, 1997 employment incident involved the assignment of work and Mr. Stackpole's assessment of appellant's performance, both of which are administrative functions. The record does not contain evidence establishing that the employing establishment committed error or abuse in handling those administrative functions. Moreover, appellant, in his December 18, 1997 statement, acknowledged telling Mr. Stackpole to "count the fucking mail again." Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>9</sup> In this case, the evidence indicates that Mr. Stackpole acted reasonably when questioning appellant's performance and it does not demonstrate that he acted abusively toward appellant.

Regarding appellant's allegation that Mr. Stackpole refused to provide transportation for medical treatment, the Board finds that the evidence of record does not establish error or abuse. Although Mr. Stackpole acknowledged refusing appellant's request to take him to a physician, the evidence does not establish that Mr. Stackpole was required to provide transportation under these circumstances. It has not been established that it was appropriate or necessary for appellant to be accompanied to a physician's office or hospital.

Regarding appellant's allegations that he was not provided with opportunities to work overtime and that his leave requests were denied, the Board has held that, although the handling of leave requests and work assignments is generally related to employment, they are administrative functions of the employer.<sup>10</sup> Moreover, he did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these administrative matters.

Regarding appellant's allegation that a cardboard box stating "limited[-]duty lunch and break room" was placed outside by a trash dumpster, the Board finds that appellant has failed to establish a compensable employment factor. For harassment to give rise to a compensable disability, 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 of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>11</sup>

According to Mr. Vayo's April 1, 1998 statement, the cardboard box was a prank by several coworkers. When he saw the box, he ordered it removed from the building. Mr. Vayo noted that appellant subsequently observed the box before it was broken down to fit in the trash dumpster. The Board finds that the evidence of record establishes a prank directed at another coworker and not at appellant. The record indicates the supervisor took appropriate action at removing the cardboard box before appellant saw it prior to removal from the building. The

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<sup>9</sup> *Christophe Jolicoeur*, 49 ECAB 553, 556 (1998).

<sup>10</sup> *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

<sup>11</sup> *Donna J. Di Bernardo*, 47 ECAB 700 (1996).

circumstances are not sufficient to establish harassment of appellant or error or abuse on the part of the employing establishment.

Regarding appellant's allegations that his supervisors called him "lame" and "lazy" and told him to "go sit in the corner and watch the paint dry," the Board finds that the evidence of record is not specific as to the dates, time, or individuals involved and; therefore, the allegations do not constitute compensable work factors. It is well established that verbal altercations or abuse among coworkers may constitute a compensable work factor.<sup>12</sup> Mr. Stackpole's May 15, 1998 statement indicated that Mr. Cote made a comment to appellant to "go sit in the corner and watch the paint dry." The Board notes, however, that the context in which this statement was made was not explained. While the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>13</sup> Appellant has not shown how such an isolated comment by Mr. Cote would rise to the level of verbal abuse.

As appellant has not submitted the necessary factual evidence to establish that his allegations are compensable under the Act, he has not met his burden of proof.

The decisions of the Office of Workers' Compensation Program dated August 18, 1999 and August 14, 1998 are affirmed.

Dated, Washington, DC  
August 3, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>12</sup> *Samuel F. Mangin, Jr.*, 42 ECAB 671 (1991); *Mary A. Sisneros*, 49 ECAB 155, 163-64 (1994).

<sup>13</sup> *See Christopher Jolicoeur*, 49 ECAB 553 (1998); *Harriet J. Landry*, *supra* note 4.