

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GENARO QUILES and U.S. POSTAL SERVICE,  
POST OFFICE, San Juan, PR

*Docket No. 00-559; Submitted on the Record;  
Issued August 13, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established traumatic injury claims on August 29, October 13, November 13, 27 or 30, 1998; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claims for merit review.

On October 7, 1997 appellant filed an occupational disease claim alleging that he sustained an emotional condition causally related to his federal employment. This claim, File No. 734478, was accepted for adjustment disorder. Appellant then filed a recurrence of disability notice (Form CA-2a) commencing May 5, 1998; the Office determined that appellant had implicated new employment incidents and a new claim (File No. 742252) was created. By letter dated October 6, 1998, the Office advised appellant that it accepted adjustment disorder as employment related.

Appellant proceeded to file additional notices of recurrence of disability; the Office properly considered them to be claims for traumatic injury as appellant alleged a new work incident in each case. With respect to File No. 750787, for an emotional condition resulting from an August 29, 1998 incident, the Office denied the claim by decision dated May 26, 1999. File No. 750341 was a claim for an emotional condition on October 13, 1998; this claim was denied by decision dated May 25, 1999. File No. 751297 involved a claim for an emotional condition on November 13, 1998; this claim was denied by decision dated May 25, 1999. On November 30, 1998 appellant filed an occupational disease claim (File No. 751582). On the claim form he alleged an incident on November 27, 1998 contributed to an emotional condition. By decision dated June 11, 1999, the Office denied the claim. Also on November 30, 1998 appellant filed a notice of recurrence of disability; this was developed as a new claim (File No. 757860). By decision dated July 7, 1999, the Office denied the claim.

In decisions dated September 29, 1999, the Office denied merit review of claims, File Nos. 750787, 750341, 751297, 751582 and 757860.

The Board finds that appellant has not established an injury in the performance of duty on August 29, October 13, November 13, 27 or 30, 1998.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.<sup>1</sup> To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>3</sup>

With respect to the claim for injury on August 29, 1998, appellant stated that, while he was being interviewed by a union steward, supervisor Lopez interrupted and began shouting at the union steward. While an employee may remain in the course of employment while discussing union matters in the workplace, appellant must establish that his condition arose out of his employment.<sup>4</sup> The actions of the supervisor are in the nature of an administrative or personnel action. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.<sup>5</sup> An administrative or personnel matter may be a factor of employment only where the evidence discloses error or abuse by the employing establishment.<sup>6</sup>

The record indicates that the steward filed a grievance regarding the incident. There are, however, no findings of error by the employing establishment. Appellant did not provide any

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Joseph F. McHale*, 45 ECAB 669 (1994).

<sup>5</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>6</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

probative evidence of error or abuse by the employing establishment, and he has not established a compensable work factor.

Appellant alleges that on October 13, 1998 supervisor Vasquez pushed his stool with intense force. The supervisor denied that the incident occurred, and appellant did not submit probative evidence substantiating an allegation of error or abuse by the supervisor. The Board finds no compensable work factor in this instance.

On November 13, 1998 appellant alleges that supervisor Alston stated in a loud tone that some employees “are fresh because they use the job phone to make outgoing calls.” In a statement dated November 19, 1998, Mr. Alston denied appellant allegations, and further stated that on November 13, 1998 appellant shouted at him and accused him of delaying the filing of a Form CA-8. The Board finds that appellant did not submit any probative evidence establishing a compensable work factor on October 13, 1998.

Appellant alleged that, on November 27, 1998, a customer shouted at a coworker and used profanity. In a statement dated December 8, 1998, the employing establishment indicated that appellant’s work area was not in proximity to the incident, that appellant left his workstation in order to try and hear what the customer was saying, and he would receive a letter of warning for leaving his work area without authorization. The Board finds that the incident does not relate to appellant’s job duties and any reaction must be considered self-generated.

On November 30, 1998 appellant alleges that he confronted supervisor Alston regarding sick leave, and that Mr. Alston turned and walked away. Appellant did not submit any evidence of error or abuse by the employing establishment. Accordingly, the Board finds no compensable factor was established.

In summary, the Board finds that appellant did not submit evidence substantiating a compensable work factor on August 29, October 13, November 13, 27 or 30, 1998. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>7</sup>

The Board further finds that the Office properly denied appellant’s requests for reconsideration without merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,<sup>8</sup> the Office’s regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>9</sup> Section 10.608(b) states that any application for review that does not

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<sup>7</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>8</sup> 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>10</sup>

The evidence submitted includes a July 9, 1999 decision with respect to an Equal Employment Opportunity claim filed by appellant; the claim does not involve any of the specific incidents on appeal in this case. There is an arbitration panel decision dated March 2, 1999 with respect to a grievance filed; it does not address any of the incidents discussed on appeal. Appellant also submitted a complaint dated August 9, 1999 pursuant to a District Court claim, but it does not provide any new and relevant evidence regarding compensable work factors.

The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2), and therefore the Office properly denied merit review in this case.

The decisions of the Office of Workers' Compensation Programs dated September 29, July 7, June 11, May 26 and two decisions dated May 25, 1999 are affirmed.

Dated, Washington, DC  
August 13, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).