

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS J. BALOGH and U.S. POSTAL SERVICE,
NOBLE BRANCH POST OFFICE, Cleveland, OH

*Docket No. 99-1512; Submitted on the Record;
Issued January 25, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his employment.

On February 24, 1997 appellant, then a 38-year-old letter carrier, filed a claim alleging that he sustained an emotional condition which he attributed to having his supervisor yell at him when giving orders and unfairly disciplining him; being closely monitored and ignored by his supervisor when he asked questions; being given conflicting orders; having his supervisor tell lies about him; having his supervisor "plant" first class mail to get him in trouble; being refused a request to attend an Equal Employment Opportunity (EEO) meeting; and being removed from his position.

By decision dated July 25, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish any compensable factors of employment. By decisions dated April 27 and July 28, 1998 and February 19, 1999, the Office denied modification of its July 25, 1997 decision.

Appellant submitted statements from coworkers in support of his claim. In a statement dated October 18, 1996, Albert Gardner related that Wilbert Brooks, appellant's supervisor, told him that he hated appellant and was out to get him. In statements dated March 28 and April 11, 1997, Michael Lipiec related that on September 17, 1996 Mr. Brooks stood by appellant's case and gave him instructions on how to case the mail and, after appellant left to deliver the mail, Mr. Brooks showed him three pieces of first class mail left behind by appellant. It was his opinion, that Mr. Brooks harassed appellant. In a statement dated April 1, 1997, Norman Luckay related that on several occasions he had seen Mr. Brooks staring at appellant and sometimes yelling at him. He related that on one occasion he saw Mr. Brooks order appellant to leave the office and begin delivering the mail, and then he saw Mr. Brooks take appellant's mail tray away and stated that he had gotten some first class mail from the tray and appellant was "nailed." In a statement dated April 2, 1997, John Ross related that on September 17, 1996 he observed

Mr. Brooks stand near appellant's workstation and stare at him. In a statement dated April 8, 1997, James Garrett related that he had heard Mr. Brooks yell at appellant and watch him closely. In a statement dated April 9, 1997, Curtis Ross related that on September 17, 1996 Mr. Brooks stared at appellant and spoke in a "rude manner" when addressing him. He related that Mr. Brooks spoke to his employees in a tone that could be described as yelling. In a statement dated April 10, 1997, Michael Gates related that Mr. Brooks yelled at appellant and other employees. In a statement dated April 10, 1997, David Smiddy related that he saw Mr. Brooks staring at appellant on February 20, 1997, that he had seen Mr. Brooks observing appellant on his delivery route and indicated that Mr. Brooks had an aggressive, threatening demeanor. On February 15, 1997 Mr. Brooks yelled conflicting orders at appellant and had harassed several employees, including appellant. In a statement dated April 15, 1997, Charlie Smith opined that Mr. Brooks "bullied" employees and yelled and stared at appellant on at least one occasion.

Appellant also submitted a copy of a March 28, 1997 grievance settlement which reduced a September 4, 1996 notice of removal to a letter of warning and awarded appellant back wages for time lost. The settlement stated, "As a final and complete settlement of the subject grievance(s) and without prejudice to the position of either party in this or any other case. The parties understand that this settlement shall not be cited by either party in any other grievance or in any other forum."

Appellant submitted a copy of an arbitration decision dated August 19, 1998 in which the employing establishment was found to have erred in removing appellant from his position on July 3, 1997.

The employing establishment submitted responses to appellant's allegations. In an undated statement received by the Office on June 16, 1997, Mr. Brooks denied that he gave appellant conflicting orders and stated that orders were given based on the particular needs of a mail route. He stated that appellant regarded his street observation as harassment but it was a regular supervisory function. Mr. Brooks denied yelling at appellant and stated that he only reiterated instructions when appellant did not follow his instructions. He stated that the coworkers who had submitted statements for appellant's claim had all approached him to apologize and offered to sign rebuttal statements.

In an undated statement, James Willis, the employing establishment acting manager, related that appellant had a problem following instructions, that street and office observations were conducted to evaluate an employee's performance, not to harass an employee, that management did not harass appellant and that appellant was not denied a request to attend an EEO meeting.

In a statement dated June 13, 1997, M.T. Corey, a postal inspector, related that appellant had complained that on February 15, 1997 Mr. Brooks had yelled at him and told him to get out of the station but that his investigation of the incident revealed that it was past appellant's starting time to begin delivering the mail when Mr. Brooks asked him to leave the station.

In support of his claim, appellant submitted reports from his attending physicians, Dr. George E. Tesar, a psychiatrist, and Dr. Alan A. Tambe, a specialist in cardiovascular disease.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty causally related to factors of his employment.

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 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.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

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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁵ See *Garry M. Carlo*, 47 ECAB 299, 303-04 (1996); *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially determine whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that his supervisor closely monitored his activities at work and denied his request to attend an EEO meeting, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷ Although such matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁸ 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.⁹ In response to appellant's allegation of being too closely monitored, Mr. Brooks related that appellant regarded his street observation as harassment but it was a regular supervisory function. In an undated statement, Mr. Willis, the employing establishment acting manager, stated that street and office observations were conducted to evaluate an employee's performance, not to harass an employee.

In statements dated March 28 and April 15, 1997, coworkers related that on September 17, 1996 Mr. Brooks stood by appellant's case and gave him instructions on how to case the mail; Mr. Brooks had stared at appellant; and Mr. Brooks stood near appellant's workstation and stared at him. A coworker related that he had seen Mr. Brooks watching appellant closely and another related that on September 17, 1996 Mr. Brooks stared at appellant. In a statement dated April 10, 1997, a coworker related that he saw Mr. Brooks staring at appellant on February 20, 1997 and that he had seen Mr. Brooks observing appellant on his delivery route. In a statement dated April 15, 1997, a coworker related that Mr. Brooks stared at appellant on at least one occasion. These statements reflect that Mr. Brooks was monitoring appellant's performance of his tasks but they are not sufficient to establish error or abuse on the part of Mr. Brooks in performing his supervisory duties.

Regarding appellant's allegation that he was denied a request to attend an EEO meeting, Mr. Brooks stated that appellant was not denied a request to attend an EEO meeting, and there is insufficient evidence that this incident occurred.

Thus, appellant has not established a compensable employment factor under the Act regarding these administrative actions.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these

⁷ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁸ *Id.*

⁹ *Id.*

could constitute employment factors.¹⁰ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹¹ In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.¹² Appellant alleged that his supervisor yelled at him when giving orders, ignored appellant when he asked questions, gave him conflicting orders, told lies about him and “planted” first class mail to get appellant in trouble. Regarding appellant’s allegations that his supervisor yelled at him when giving orders, the Board has recognized the compensability of verbal altercations or abuse in certain circumstances.¹³ However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁴ When sufficiently detailed and supported by the record, verbal altercations may constitute a compensable factor of employment.¹⁵

In an undated statement received by the Office on June 16, 1997, Mr. Brooks denied yelling at appellant and stated that he only reiterated instructions when appellant did not follow his instructions. In an undated statement, Mr. Willis stated that management did not harass appellant. In a statement dated June 13, 1997, Mr. Corey, a postal inspector, related that appellant had complained that on February 15, 1997 Mr. Brooks had yelled at him and told him to get out of the station but that his investigation of the incident revealed that it was past appellant’s starting time to begin delivering the mail when Mr. Brooks asked him to leave the station.

In a statement dated April 1, 1997, Mr. Luckay related that on several occasions he had seen Mr. Brooks yelling at appellant. In a statement dated April 8, 1997, Mr. Garrett related that he had heard Mr. Brooks yelling at appellant. In a statement dated April 9, 1997, Mr. Ross related that on September 17, 1996 Mr. Brooks spoke in a “rude manner” when addressing appellant. He related that Mr. Brooks spoke to his employees in a tone that could be described as yelling. In a statement dated April 10, 1997, coworker Michael Gates related that Mr. Brooks yelled at appellant and other employees. In a statement dated April 10, 1997, Mr. Smiddy related that Mr. Brooks had an aggressive, threatening demeanor and had yelled at and harassed several employees including appellant. In a statement dated April 15, 1997, Mr. Smith related that Mr. Brooks “bullied” employees and yelled at appellant. While it appears from the record that Mr. Brooks had an aggressive style of managing, the statements are nonspecific as to the instances in which Mr. Brook raised his voice and are insufficient evidence that he harassed or

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹³ See *Harriet J. Landry*, 47 ECAB 543, 546 (1996).

¹⁴ *Id.*

¹⁵ *Garry M. Carlo*, *supra* note 5.

discriminated against appellant. Therefore appellant has not established a compensable factor of employment in this regard.

Regarding appellant's allegations that Mr. Brooks ignored appellant when he asked questions, gave him conflicting orders, told lies about him and "planted" first class mail to get appellant in trouble, Mr. Brooks denied that he gave appellant conflicting orders and stated that orders were given based on the particular needs of a mail route. In a statement dated October 18, 1996, Mr. Gardner related that Mr. Brooks told him that he hated appellant and was out to get him. In statements dated March 28 and April 11, 1997, Mr. Lipiec related that on September 17, 1996 Mr. Brooks showed him three pieces of first class mail left behind after appellant left to deliver the mail and stated his opinion that Mr. Brooks harassed appellant. In a statement dated April 1, 1997, Mr. Luckay related that on one occasion he saw Mr. Brooks order appellant to leave the office and begin delivering the mail and then he saw Mr. Brooks take appellant's mail tray away and stated that he had gotten some first class mail from the tray and appellant was "nailed." However, this evidence is not sufficient to establish that Mr. Brooks "planted" first class mail in order to get appellant into trouble or that he lied about him or gave him conflicting orders or otherwise harassed him. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding the March 28, 1997 grievance settlement in which the employing establishment reduced a September 4, 1996 notice of removal to a letter of warning, the settlement specifically stated that the parties agreed not to cite the settlement in any other grievance or any other forum. The mere fact that personnel actions were later modified or rescinded, does not, in and of itself, establish error or abuse.¹⁶ The March 28, 1997 settlement is insufficient to establish that the September 4, 1996 removal constituted error or abuse on the part of the employing establishment. Therefore, appellant has not established a compensable factor of employment in this regard.

Regarding the August 19, 1998 arbitration decision in which the employing establishment was found to have erred in its July 3, 1997 removal action, the Board finds that this action could constitute a compensable factor of employment. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁷ In this case, none of the medical reports of record mention the July 3, 1997 removal action by the employing establishment. Therefore the medical evidence of record is insufficient to establish that appellant sustained an emotional condition causally related to the July 3, 1997 removal action.

¹⁶ *Id.*

¹⁷ See *William P. George*, 43 ECAB 1159, 1168 (1992).

For the foregoing reasons, appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty causally related to factors of his employment.

The decisions of the Office of Workers' Compensation Programs dated February 19, 1999 and July 28 and April 27, 1998 are affirmed, as modified.

Dated, Washington, DC
January 25, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member