

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES M. OSBORNE and U.S. POSTAL SERVICE,
POST OFFICE, Midflorida, FL

*Docket No. 00-1309; Submitted on the Record;
Issued July 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to compensable factors of his federal employment.

On June 10, 1999 appellant, then a 40-year-old letter carrier, filed a claim alleging that he was incapacitated with stress, nausea, vomiting and headache due to constant harassment, intimidation and arguing on the workroom floor. Appellant stopped work on June 10, 1999 and did not return. The employing establishment controverted appellant's claim.

An osteopath, Dr. Ross E. Glider, noted that appellant's case was complicated by his previous history of anxiety/depression as far back as September 12, 1994.

Appellant submitted a statement claiming that on June 10, 1999 Supervisor Joann Beach harassed and intimidated him while on his route, which made him sick. Ms. Beach denied harassing or intimidating appellant and claimed that his stress was related to his personal life involving a legal dispute with his ex-wife.

By letter dated July 15, 1999, the Office of Workers' Compensation Programs requested further information, including a recitation of the specific factors of employment appellant implicated in the causation of his condition. The Office gave appellant 30 days within which to submit the requested information. Nothing further was received by the Office during the allotted time period.

By decision dated August 17, 1999, the Office rejected appellant's claim finding that he had failed to establish fact of injury.

On August 18, 1999 the Office received an August 13, 1999 letter from appellant, including exhibits, diagrams and witness statements. The Office treated appellant's letter and evidence received on August 18, 1999 as a request for reconsideration.

Appellant described his employment prior to being supervised by Ms. Beach, discussed his job requirements, reported various statements allegedly made to him by Ms. Beach, reported various alleged incidents involving Ms. Beach and claimed that Ms. Beach was totally rude and unsympathetic towards him. Appellant alleged that Ms. Beach violated his rights, intimidated him by standing behind him tapping on a U-cart, constantly watched him, rode with him monitoring his route, recounted his mail, glared at him, screamed in his face and criticized his performance, which caused him undue stress and strain. Additionally submitted were multiple coworker statements. An August 10, 1999 statement from Richard Sellar, Jr., indicated that on June 10, 1999 Ms. Beach asked him to pull appellant's flats down, that another supervisor asked him to pull appellant's letter-size mail down and that he was one of six people who had to deliver appellant's route. A July 28, 1999 statement from James Sanders stated that he had observed Ms. Beach standing almost on top of appellant monitoring him as he was casing his mail and twice using a U-cart to lean on while behind appellant writing about him. In an undated statement, coworker Louis N. Parasmo stated that he had observed Ms. Beach standing behind appellant watching him as he cased his route. Mr. Parasmo alleged that this observation harassment had been done for years but not as frequently as with appellant and, that he was subjected to one-day serial route inspections which was a "pure harassment tool" used against problem carriers and violated the national agreement. He stated that Ms. Beach constantly stopped appellant to converse and that he could remember no other carrier who received this much attention. A July 27, 1999 statement from Charles Buchanan, a coworker, noted that he saw Ms. Beach or another supervisor frequently by appellant's case pointing things out and taking notes. An undated statement from Steve Thomas indicated a decline in courtesy and blatant contract violations, that carriers were required to remove all but two photographs from their work area, that schedule changes were denied, that appellant was attracting a lot of extra attention and that Ms. Beach was blocking him with a U-cart. A July 12, 1999 statement from Ed Robbins noted that Ms. Beach was a new supervisor who had never carried a route on her own. He saw Ms. Beach standing behind appellant watching him work and that he felt that was stressful. An undated letter from Brian Haggerty stated that he did not feel appellant was a threat simply because he left work stressed out. An August 9, 1999 statement from Phyllis Marino stated that on June 10, 1999 appellant requested extra time which agitated Ms. Beach and that she ordered his mail recounted. He alleged management harassed appellant and did not appreciate the fact that appellant was not afraid to voice his opinions. An undated statement from Francisco Morales reported directives regarding delivering accountable mail. An August 10, 1999 statement from Helen Hoppman stated that appellant cared deeply about his customers and was thorough in his job. An undated statement from Betty Gedke noted that she respected appellant and that he was truthful. A July 22, 1999, statement from postal customers George and Doris Weikel stated that on June 10, 1999 appellant appeared ill and asked to use their bathroom where he threw up.

By decision dated November 19, 1999, the Office found that appellant had failed to establish any compensable factors of employment in the causation of his condition. The Office found that many of the implicated actions/activities were administrative actions or functions and that no evidence of error or abuse had been presented. The Office further found that allegations of Ms. Beach tapping on the plastic tray or screaming in appellant's face were unsubstantiated by witnesses, such that they could not be established as having occurred.

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

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.³ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁴ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁵

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Id.*

³ *Donna Faye Cardwell*, *supra* note 1, see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*

⁵ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

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.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In the present case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.

Appellant alleged that supervisory harassment on June 10, 1999 made him sick. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁹ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹⁰ Although appellant claimed that he was harassed by Ms. Beach to the point of becoming ill on June 10, 1999, Ms. Beach denied harassing or intimidating him and claimed that his stress was due to his personal problems at that time. Coworker statements regarding the circumstances of June 10, 1999 only attest to the fact that other workers were asked to pull down appellant's mail and to deliver his route. The postal customer statement merely supports that appellant became physically ill and vomited on that date. No specific incidents of harassment by Ms. Beach were substantiated. Therefore, none of these witness statements support appellant's harassment claim. As appellant's allegations of June 10, 1999 harassment are not supported by specific, reliable, probative and substantial evidence the Board finds that these allegations do not constitute compensable factors of employment.

Appellant alleged that he was harassed and intimidated by supervisors, especially by Ms. Beach, standing behind him watching him and his performance at his case and riding with him monitoring his performance on his route. The Board has held that the monitoring of employees' behavior and performance is a supervisory personnel/administrative function of the

⁶ See *Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

⁹ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

employer and does not arise out of appellant's regular or specially assigned duties.¹¹ Therefore, absent evidence of error or abuse, such monitoring is not a compensable factor of employment. In the instant case, appellant has not demonstrated error or abuse by his supervisor. Although he has alleged that Ms. Beach tapped her pencil on a U-cart while monitoring his work and screamed in his face pointing things out to him, there is insufficient corroborating evidence that these incidents occurred as alleged.

In several of the coworker statements submitted, individual employee's expressed their personal opinions as to what particular supervisory monitoring behavior constituted harassment. One coworker categorized a one-day serial route inspection as a "pure harassment tool." The Board, however, has held that supervisory review of work, when conducted without demonstrated evidence of error or abuse, is not a compensable factor of employment and does not constitute harassment, but is a supervisory requirement of employment. Perceptions by coworkers of certain supervisory functions as being *per se* harassment does not establish that these functions were in fact harassment. That can only be shown by demonstrating error or abuse in the performance of such functions, which was not demonstrated in this case. Therefore, any emotional condition arising out of appellant being monitored on the workroom floor or on a mail route is not compensable under the Act.

Appellant alleged that Ms. Beach was rude towards him, but he failed to submit any corroborating evidence of incidents of such rudeness. Therefore, this allegation has not been established as being factual. Appellant alleged that Ms. Beach criticized his performance, which caused him stress and strain. The Board has frequently explained that criticism of performance is an administrative and/or personnel matter and, absent evidence of error or abuse, is not a compensable factor of employment.¹² As no error or abuse in this criticism has been demonstrated, appellant has not established it as a compensable factor of employment.

Appellant has not provided evidence sufficient to establish that he was harassed or intimidated by his supervisors in any way and has, therefore, failed to establish that he developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

¹¹ See *Alberta Kinloch-Wright*, 48 ECAB 459 (1997); *Michael Ewanichak*, 48 ECAB 364 (1997).

¹² See *Harriet J. Landry*, 47 ECAB 543 (1996); *Sammy N. Cash*, 46 ECAB 419 (1995).

Accordingly, the November 19 and August 17, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
July 25, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member