

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT D. GAGNON and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Washington, DC

*Docket No. 00-2678; Submitted on the Record;
Issued June 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On September 8, 1999 appellant, a 41-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained an emotional condition as a result of being subjected to physical and verbal abuse from co-workers. Appellant also alleged that the employing establishment failed to address the problem. He identified July 29, 1999 as the date he first became aware of his employment-related emotional condition. Appellant ceased working on July 11, 1999.

By letter dated November 9, 1999, the Office of Workers' Compensation Programs requested that appellant provide additional factual and medical information regarding his claim.

Appellant subsequently submitted a December 28, 1999 statement detailing a number of employment incidents that allegedly contributed to his claimed psychiatric condition. Appellant explained that, among other things, he was physically assaulted and subjected to verbal threats and racial prejudice. He provided dates of incidents and the names of individuals who were either involved in the incidents or witnessed some aspect of the event. Appellant also described several personnel actions that were instituted against him.

By decision dated June 6, 2000, the Office denied appellant's claim on the basis that the evidence failed to establish that the claimed emotional condition occurred in the performance of duty. The Office characterized several of the alleged incidents as administrative in nature, and therefore, noncompensable.¹ Appellant's remaining allegations were found to have been

¹ As a general rule, an employee's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor. *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

unsupported by fact. The Office specifically noted that appellant was “asked to provide ... corroborating employee statements,” but “[n]o such statements accompanied his submission.”

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

In order to establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.²

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.³ Once the Office undertakes development of the record it has the responsibility to do so in a proper manner.⁴ In the instant case, the Office failed to properly develop the factual record.

While appellant did not submit any corroborating witness statements, the Office’s November 9, 1999 request for information did not specifically instruct him to do so. Appellant did, however, provide a detailed description of several employment incidents, including the dates and the names of individuals involved in the alleged incidents. A number of these incidents involved alleged verbal and physical abuse from employing establishment supervisors.⁵ The Office, however, did not submit appellant’s December 28, 1999 statement to the employing establishment for comment. Thus, none of appellant’s allegations have been refuted. Under the circumstances, the absence of corroborating witness statements is not a sufficient basis upon which to conclude that appellant’s allegations are unproven. Accordingly, the claim is remanded to the Office for further development. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

² See *Kathleen D. Walker*, 42 ECAB 603 (1991).

³ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁴ *Henry G. Flores*, 43 ECAB 901, 905 (1992).

⁵ The Board has recognized that verbal abuse by a supervisor or threats of physical violence in the workplace are compensable under certain circumstances. *Kimber A. Stokke*, 48 ECAB 510, 512 (1997); *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

The June 6, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
June 25, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member