

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID A. KIMMEY and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Cincinnati, OH

*Docket No. 00-1559; Submitted on the Record;  
Issued October 2, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty for the period May 30 to December 29, 1998.

On January 2, 1999 appellant, then a 47-year-old letter carrier, filed a claim for an emotional condition for the period May 30 to December 29, 1998.<sup>1</sup> He alleged that he was harassed by his supervisors and threatened with suspension and dismissal. Appellant was off work from December 29, 1998 to January 7, 1999.

In a statement dated February 23, 1999, appellant stated that he began to work for the employing establishment in 1985 and became a letter carrier in February 1986. He stated that he was off work from October 27, 1997 to March 27, 1998 following a motor vehicle accident in which he was injured. Appellant indicated that he had a new customer service supervisor in March 1998, Debra Regedanz, and that she gave him a letter of warning on June 27, 1998, later withdrawn, for creating a disturbance on the workroom floor. He stated that she screamed and yelled at him and threatened to have him removed from the property. On July 22, 1998 he gave her a note from his physician regarding the number of hours in which he was allowed to work and she screamed and yelled at him, telling him to shut up and either hit the time clock and hit the street or she would have him removed from the premises. Ms. Regedanz told him to curtail third class mail and get out on the street so he would not have to work overtime. Appellant requested a meeting with a union steward that took one-half hour. He realized he could not complete his work in eight hours and he requested one-half hour of street help. On July 23, 1998 he received a letter of warning for failure to follow instructions for not curtailing mail but the letter of warning was later dismissed. On December 8, 1998 appellant was given a discussion regarding inappropriate language and on December 14, 1998 he was given a letter of warning and more threats of dismissal, which gave him chest pains and he was taken to the hospital.

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<sup>1</sup> Appellant subsequently filed a new occupational disease claim for work factors on and after January 7, 1999.

In an undated statement, Fred Brinkman, a union steward, indicated that on June 27, 1998 appellant received a letter of warning from Ms. Regedanz for being loud and disruptive. On June 29, 1998 the letter was withdrawn. On July 22, 1998 appellant and Ms. Regedanz had a confrontation about overtime and he received a letter of warning the following day for failure to follow instructions, later reduced to a discussion. In August 1998, appellant received a discussion about sick leave. On December 8, 1998 he received a discussion about his language on the workroom floor and received a letter of warning on December 14, 1998. On December 29, 1998 appellant received a one-week suspension for the December 8, 1998 incident. The letter of warning and suspension were later reduced to discussions.

In an undated statement, an employee whose signature is illegible stated that he had worked in Ms. Regedanz' section since November 1998 and never witnessed her yelling at employees on the workroom floor.

In statements dated December 30, 1998 and March 31, 1999, Colin Maxwell, manager of customer service, stated that he was present at a meeting at which Ms. Regedanz gave appellant a letter of suspension. Appellant seemed fine at that time but later complained of chest pain and was taken to the hospital. He stated that when he saw appellant's wife at the hospital, she stated that, when she heard he was in the hospital, she thought he was just crying "wolf" again.

In a statement dated March 6, 1999, Lorraine McGuire stated that she had worked with appellant from 1992 to 1997 and during that time he was pleasant, friendly, helpful and dependable.

In a statement dated March 16, 1999, Mark Mazur, a supervisor in customer service, indicated that Ms. Regedanz never screamed or shouted at appellant, either on the workroom floor or in discussions in her office and acted in a professional manner but appellant raised his voice and used profane language. In a letter dated March 18, 1999, he stated that on December 8, 1998 he told appellant to get back to his case and appellant responded with foul language. When Mr. Mazur told him not to use that kind of language, appellant responded with more foul language and he received an official discussion for leaving his case and then a letter of warning when he continued to use obscenities. Mr. Mazur stated that on December 14, 1998 he issued a letter of suspension to appellant for using profanity on the workroom floor.

In a statement dated March 18, 1999, Ms. Regedanz stated that appellant submitted doctor's notes recommending he be off work due to health reasons and stating that he could not work overtime. She stated that on June 27, 1998 she issued appellant a letter of warning for being loud and disruptive on the workroom floor and he became hostile, wadding up the letter and throwing it at her. Ms. Regedanz told him he would be removed from the premises if he ever threw anything at her again and he threatened to sue her and said: "This is not a threat, but it's supervisors like you that create postal violence. I'm not going to bust my ass for you." The letter was subsequently withdrawn. She told him on July 22, 1998 not to take bulk mail that day as his medical slip precluded him from working overtime but he stated that his doctor did not care if he worked one-half hour overtime and he just wanted to do his job and be left alone. Ms. Regedanz stated that appellant began to talk in a loud voice and she told him to keep his voice down but he said: "It's a free country." She told him to be quiet or hit the clock and denied that she yelled or screamed at him. Ms. Regedanz stated that appellant did not like to be

counseled regarding his performance and went home sick each time she counseled him regarding use of leave or his job performance. She stated that in June, August and November 1998 she counseled appellant regarding his use of sick leave. Ms. Regedanz stated that on September 10, 1998 she told appellant that he did not have enough work to require overtime but he argued with her. Ms. Regedanz stated that on December 27, 1998 she gave appellant a letter of suspension for yelling and calling his supervisor names after being instructed not to do so.

In a letter dated March 26, 1999, Glenn Corbett, the union president, stated that Ms. Regedanz used to be in charge of his group of letter carriers and he witnessed her scream at all of the carriers. He stated that she was new and spread the word through the grapevine that she was going to rule with an iron fist. Mr. Corbett stated his opinion that appellant was harassed and intimidated by Ms. Regedanz.

In a statement dated March 29, 1999, Steven Morris stated that on or around July 22, 1998 appellant was talking to Ms. Regedanz about overtime and she got upset and started yelling at him to hit the clock and leave but he continued to work at his case.

Appellant submitted medical evidence in support of his emotional condition.

By decision dated July 21, 1999, the Office denied appellant's claim for an emotional condition for the period May 30 to December 29, 1998.

By letter dated July 27, 1999, appellant requested an oral hearing that was held on November 16, 1999. He testified that he was off work until approximately May 27, 1998 due to injuries sustained in a motor vehicle accident. Appellant testified that when he returned to work his supervisor wanted him to work longer than eight hours in a day which was prohibited by his physician. He indicated that his supervisor yelled at him from one to three times a week, that on July 22, 1998 she threatened to have him removed from the employing establishment premises when he tried to "discuss something with her." Appellant alleged that she would sometimes scream and yell at him using profanities and indicated that she would rule appellant's section with an iron fist, that he was given letters of warning on July 11 and 23, 1998 and a letter of suspension on December 29, 1998 for failure to follow instructions and that he received a letter of warning on December 14, 1998 for using inappropriate language. He indicated that these disciplinary actions were later reduced to formal discussions.

By decision dated February 3, 2000, the Office hearing representative affirmed the Office's July 21, 1999 decision on the grounds that appellant had failed to establish that he sustained an emotional condition causally related to compensable factors of employment.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition for the period May 30 to December 29, 1998.

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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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 review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment imposed unfair disciplinary actions, 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.<sup>8</sup> Although the handling of disciplinary matters is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.<sup>9</sup> 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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> See *Effie O. Morris*, 44 ECAB 470, 473 (1993).

<sup>6</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

<sup>9</sup> *Id.*

of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> In this case, appellant's supervisors issued discussions, letters of warning and a suspension regarding his use of inappropriate language, failure to follow instructions and his use of leave. The letters of warning and suspension were later reduced to discussions. The record does not establish that the employing establishment erred or acted abusively in its application of discipline regarding appellant. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.<sup>11</sup>

In statements dated December 30, 1998 and March 31, 1999, Mr. Maxwell, manager of customer service, stated that he was present at a meeting at which Ms. Regedanz gave appellant a letter of suspension and that appellant later complained of chest pain and was taken to the hospital. However, the fact that appellant complained of illness following receipt of the letter of suspension does not establish error or abuse on the part of the employing establishment.

In a letter dated March 18, 1999, Mr. Mazur, a customer service supervisor, stated that on December 8, 1998 he told appellant to get back to his case and appellant used profanities. Mr. Mazur gave appellant an official discussion for leaving his case and then a letter of warning when he continued to use obscenities. He stated that on December 14, 1998 he issued a letter of suspension to appellant for using profanity on the workroom floor. The record does not establish that Mr. Mazur erred or acted abusively in the handling of these disciplinary matters.

In a statement dated March 18, 1999, Ms. Regedanz stated that on June 27, 1998 she issued appellant a letter of warning for being loud and disruptive on the workroom floor and he became hostile, wadding up the letter and throwing it at her. She told him he would be removed from the premises if he ever threw anything at her again and he threatened to sue her. Ms. Regedanz told him on July 22, 1998 not to take bulk mail that day as his medical slip precluded him from working overtime. He began to talk in a loud voice and she told him to keep his voice down but he said: "It's a free country." Ms. Regedanz told him to be quiet or hit the clock and denied that she yelled or screamed at him. She stated that appellant did not like to be counseled regarding his performance. Ms. Regedanz stated that on December 27, 1998 she gave appellant a letter of suspension for yelling and calling his supervisor names after being instructed not to do so. The record does not establish that Ms. Regedanz erred or acted abusively in her handling of these disciplinary matters.

In an undated statement, Mr. Brinkman, a union steward, stated that on June 27, 1998 appellant received a letter of warning from Ms. Regedanz for being loud and disruptive. On July 22, 1998 appellant and Ms. Regedanz had a confrontation about overtime and he received a letter of warning the following day for failure to follow instructions. In August 1998, appellant received a discussion about sick leave. On December 8, 1998 he received a discussion about his language on the workroom floor and received a letter of warning on December 14, 1998. On December 29, 1998 appellant received a one-week suspension for the December 8, 1998

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<sup>10</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>11</sup> See *Michael Thomas Plante*, *supra* note 8.

incident. Mr. Brinkman's statement does not establish that the employing establishment erred or acted abusively in handling these disciplinary actions.

Thus, appellant has not established a compensable employment factor under the Act regarding the employing establishment's use of discipline.

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 could constitute employment factors.<sup>12</sup> 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.<sup>13</sup> In the present 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.<sup>14</sup>

In his January 2, 1999 claim form, appellant alleged that he was harassed by his supervisors and threatened with suspension and dismissal. In later statements, he alleged that Ms. Regedanz gave him a letter of warning on June 27, 1998 for creating a disturbance on the workroom floor, screamed and yelled at him and threatened to have him removed from the property. Appellant alleged that on July 22, 1998 he gave her a note from his physician regarding the number of hours which he was allowed to work and she screamed and yelled at him, telling him to shut up and either hit the time clock and hit the street or she would have him removed from the premises. He stated that on July 23, 1998 he received a letter of warning for failure to follow instructions for not curtailing mail but the letter was later dismissed. He stated that on December 8, 1998 he was given a discussion regarding inappropriate language and on December 14, 1998 he was given a letter of warning and more threats of dismissal, which gave him chest pains and he was taken to the hospital. Appellant testified at the hearing that he was asked to work overtime despite his doctor's recommendation against overtime. He testified that Ms. Regedanz yelled at him from one to three times a week, that she would sometimes scream and yell at him using profanities and indicated that she would rule his section with an iron fist.

In a statement dated March 18, 1999, Ms. Regedanz stated that on June 27, 1998 she issued appellant a letter of warning for being loud and disruptive on the workroom floor and he became hostile, wadding up the letter and throwing it at her. She told him he would be removed from the premises if he ever threw anything at her again and he threatened to sue her and said: "This is not a threat, but it's supervisors like you that create postal violence. I'm not going to bust my ass for you." Ms. Regedanz told him on July 22, 1998 not to take bulk mail that day as his medical slip precluded him from working overtime but he stated that his doctor did not care if

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<sup>12</sup> See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>13</sup> See *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>14</sup> 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).

he worked one-half hour overtime and he just wanted to do his job and be left alone. She stated that appellant began to talk in a loud voice and she told him to keep his voice down but he said, “[i]t’s a free country.” Ms. Regedanz told him to be quiet or hit the clock and denied that she yelled or screamed at him. She stated that appellant did not like to be counseled regarding his performance and went home sick each time she counseled him regarding use of leave or his job performance. Ms. Regedanz stated that in June, August, and November 1998 she counseled appellant regarding his use of sick leave. She stated that on December 27, 1998 she gave appellant a letter of suspension for yelling and calling his supervisor names after being instructed not to do so.

In a statement dated March 16, 1999, Mr. Mazur, a supervisor in customer service, indicated that Ms. Regedanz did not scream or shout at appellant, either on the workroom floor or in discussions in her office and acted in a professional manner but appellant raised his voice and used profane language. However, in a statement dated March 29, 1999, Mr. Morris stated that on or around July 22, 1998 appellant was talking to Ms. Regedanz about overtime and she got upset and started yelling at him to hit the clock and leave but he continue to work at his case. The Office accepted as factual that Ms. Regedanz yelled at appellant to “hit the clock and leave” on July 22, 1998. The Board finds that this one incident does not constitute harassment. In her statement regarding the July 22, 1998 incident, Ms. Regedanz stated that appellant began to talk in a loud voice. It is reasonable to assume that Ms. Regedanz responded in a loud voice to be heard above appellant’s voice. She indicated that appellant had acted in a disruptive manner at work prior to the July 22, 1998 incident. On June 27, 1998 he was disciplined for being loud and disruptive and Ms. Regedanz stated that when she gave him a letter of warning he wadded up the paper and threw it at her. Mr. Mazur indicated that appellant had used foul language and raised his voice on occasion. Considering all the circumstances, even if Ms. Regedanz did yell at appellant on July 22, 1998, this incident is not sufficient to rise to the level of harassment.

In a letter dated March 26, 1999, Mr. Corbett, the union president, stated that Ms. Regedanz was previously the supervisor of his group of letter carriers and he witnessed her scream at all of the carriers. He stated that she was new and spread the word through the grapevine that she was going to rule with an iron fist. Mr. Corbett stated his opinion that appellant was harassed and intimidated by Ms. Regedanz. However, he did not indicate that he had any personal knowledge regarding appellant’s allegations of harassment and, therefore, his statement does not establish that appellant was harassed by his supervisors.

In an undated statement, Mark Hummer alleged that he had been harassed by several supervisors regarding various matters such as overtime. However, his experiences are not relevant to appellant’s allegations because they do not establish that appellant was harassed by the employing establishment.

In a statement dated March 6, 1999, Ms. McGuire stated that she had worked with appellant from 1992 to 1997 and during that time he was pleasant, friendly, helpful and dependable. However, her experiences in dealing with appellant do not establish that his allegations of harassment by the employing establishment are factual.

Regarding appellant's allegation that the employing establishment harassed him by requiring him to work overtime, there is no evidence of record that this occurred and, therefore, it is not deemed a compensable factor of employment.

Thus, appellant has not established a compensable employment factor under the Act regarding his allegations of harassment by the employing establishment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>15</sup>

The February 3, 2000 and July 21, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
October 2, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>15</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki, supra* note 6 at 502-03.