

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KEITH E. JORDAN and U.S. POSTAL SERVICE,  
EDGEMOOR POST OFFICE, Wilmington, DE

*Docket No. 01-1874; Submitted on the Record;  
Issued April 23, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition due to factors of his federal employment.

Appellant, a 45-year-old letter carrier, filed a notice of occupational disease on June 15, 1999 alleging that he developed an emotional condition due to threats on the workroom floor. The Office of Workers' Compensation Programs denied appellant's claim on July 19, 2000 finding that appellant failed to substantiate a compensable factor of employment. Appellant requested an oral hearing on July 26, 2000. By decision dated April 13, 2001, the hearing representative affirmed the Office's July 19, 2000 decision.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an emotional condition due to factors of his federal 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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>1</sup>

Appellant attributed his emotional condition to actions by a coworker, William Klein and his supervisor, Michael F. Behringer. Appellant alleged on October 21, 1998 that Mr. Klein called him an "asshole." On October 31, 1998 Mr. Klein threatened to "kick his ass," on November 3, 1998 appellant and Mr. Klein had a meeting with the union and the employing

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

establishment to resolve the dispute. Appellant stated that he and Mr. Klein were directed to stay away from each other. He alleged that on June 11, 1999 Mr. Klein drove by him in his vehicle and threatened to kill or shoot him. Appellant asserted that this contact was improper and as a result of Mr. Behringer's directions. On June 12, 1999 as appellant was waiting to clock in, Mr. Klein began to yell and shout calling appellant a baby and suggesting that he act like a man.

The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.<sup>2</sup>

Appellant has submitted no evidence in support of his allegations that Mr. Klein called him names on October 21, 1998, that Mr. Klein threatened appellant on October 31, 1998 or that he threatened him again on June 11, 1999. The employing establishment conducted an investigation into the June 11, 1999 incident including interviewing a witness who stated that appellant drove away from Mr. Klein on June 11, 1999 and that Mr. Klein called appellant either a jackass or a horse's ass. The witness did not hear a threat. The postal inspector also stated that appellant initially alleged that Mr. Klein tried to run over him and later retracted this statement. Appellant has failed to establish these factors of employment.

Appellant alleged that Mr. Behringer was responsible for the June 11 and 12, 1999 incidents as he directed Mr. Klein to retrieve mail from appellant without appellant's knowledge and despite the decision in the November 3, 1998 meeting that the two coworkers should not have contact. The Board notes assigning work duties relates to administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>3</sup> Appellant has not submitted evidence that Mr. Behringer acted unreasonably in directing Mr. Klein to retrieve mail from appellant. Therefore, he has failed to establish this factor of employment.

However, the Board finds that appellant has established that Mr. Klein engaged in verbal abuse on June 12, 1999. He alleged that Mr. Klein called him names and clenched his fist on this occasion. He also submitted two witness statements that Mr. Klein yelled at appellant and attempted to start a fight.

Appellant has established a compensable factor of employment, the verbal altercation with Mr. Klein on June 12, 1999. 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

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<sup>2</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>3</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>4</sup>

In support of his claim, appellant submitted a work release note dated June 11, 1999 from Dr. Dale LaTonn, a general practitioner, who diagnosed stress reaction and stated that appellant was threatened at work. This report does not clearly identify the accepted factor of employment as causing or contributing to appellant's diagnosed condition and is not sufficient to meet appellant's burden of proof. The date of this note is one day prior to the incident accepted in this case.

Appellant also submitted several work release notes from Dr. Jorge Pereira-Ogan, a psychiatrist. On September 29, 1999 he stated that appellant could not return to work for six months due to "a situation at work which has not been rectified." Dr. Pereira-Ogan also noted that appellant "received terroristic threats causing a great deal of stress. He indicated that this occurred on June 11, 1999. On July 14, 1999 Dr. Pereira-Ogan stated that appellant blew the whistle at work and was being threatened by a coworker. These reports do not address the accepted employment incident on June 12, 1999 and are not sufficient to meet appellant's burden of proof.

In an undated report, Dr. Pereira-Ogan noted that appellant had four incidents of harassment and terroristic threatening. He stated: "While the incidents which occurred between [appellant] and Mr. Klein are fairly common in the workplace, [appellant] has been more sensitive than others to threats as he was sensitized by the brutal murder of his sister." Dr. Pereira-Ogan concluded: "It is within reasonable medical certainty that I can state that [appellant] suffered from a stress reaction (anxiety-depression-fear for his life and nights of insomnia) as a direct consequence of the incidents that occurred during the 10 months preceding June 11, 1999." This report indicates that Dr. Pereira-Ogan does not attribute appellant's emotional condition to the accepted June 12, 1999 employment incident, but instead to events which have not been established as compensable. Therefore, this report does not establish that appellant sustained an emotional condition as a result of the June 12, 1999 verbal altercation with Mr. Klein.

As appellant has failed to submit any medical opinion evidence attributing his emotional condition to the accepted employment factor, he has failed to meet his burden of proof and the Office properly denied his claim.

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<sup>4</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

The April 13, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 23, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member