

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KENNETH B. BOHANNA and U.S. POSTAL SERVICE,  
POST OFFICE, Memphis, TN

*Docket No. 01-1517; Submitted On the Record;  
Issued December 11, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On April 14, 2000 appellant, then a 42-year-old clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a stress-related condition when he was harassed by his supervisor. Appellant stopped work on January 17, 2000.

Appellant submitted a statement which raised the following allegations: (1) he was generally harassed and questioned by his supervisors Vernita Edwards and James Winter, (Ms. Edwards allegedly harassed appellant by sitting in a lunch seat normally occupied by appellant); (2) on November 30, 1999 appellant was improperly assigned the duty of hanging mail sacks by Ms. Edwards even though appellant informed her that this duty would aggravate his asthma; (3) appellant was harassed and questioned by his supervisor Mr. Winter regarding his time card; (4) appellant worked as a 204-B supervisor for eight years and was not promoted as he believed he should have been; (5) on May 6, 1999 appellant requested he be permanently transferred to the day shift and this request was improperly denied; and (6) appellant was improperly disciplined in the form of a 7-day suspension on December 23, 1999 and a 14-day suspension on May 9, 2000.

Appellant submitted an attending physicians report dated April 13, 2000 and a report from Dr. Howard E. Nelson, a psychologist, dated April 19, 2000. The attending physicians report dated April 13, 2000, prepared by Dr. Nelson indicated that appellant reported severe anxiety and depression related to stress at work. He diagnosed appellant with adjustment disorder with anxious mood and indicated that with a checkmark "yes" that this condition was caused or aggravated by stress from work. The report from Dr. Nelson dated April 19, 2000, noted initially treating appellant on January 17, 2000 when appellant presented with symptoms of sleep disturbances and depression surrounding his employment.

In a letter dated May 15, 2000, the Office of Workers' Compensation Programs advised appellant that the evidence submitted in support of his claim was insufficient to establish his claim. The Office advised appellant of the type of evidence needed to establish his claim and requested he submit such evidence.

Appellant submitted a report from Dr. Anthony W. Jackson, a psychologist, dated May 24, 2000. Dr. Jackson indicated that appellant was initially seen on May 23, 2000 for work stress. He noted that appellant's complaints regarding his supervisor Ms. Edwards who he believed was unfairly assigning him duties caused stress and anxiety at the workplace. Dr. Jackson recommended appellant be placed outside the supervision of Ms. Edwards.

The employing establishment submitted copies of letters of suspension dated December 23, 1999 and May 9, 2000. The December 23, 1999 suspension was issued because on November 30, 1999 appellant failed to follow the instructions of his supervisor and hang mail sacks. The May 9, 2000 suspension notice indicated that appellant was charged with failure to follow instructions and absent without leave.

Appellant's supervisor Ms. Edwards submitted a statement dated June 19, 2000, indicating that on November 30, 1999 she requested appellant to hang mail sacks. She noted that appellant ignored her instructions and walked away. Ms. Edwards indicated that appellant never revealed to her that he could not hang sacks due to an asthma condition. She noted that she proceeded to a supervisor's meeting and later learned that appellant had an active asthma condition.<sup>1</sup> Ms. Edwards indicated that after the meeting she observed appellant not working but lying over a chute and again instructed him to hang mail sacks. He refused to do so noting that it was against his health. She noted that appellant further replied that he did not care what discipline she enacted against him. Ms. Edwards indicated that appellant was assigned the same position that he now holds and was aware of the necessity of replacing the sacks after dispatch of value. She noted that appellant handled the same sacks in his position as clerk and is the only clerk who was unwilling to hang the sacks. Ms. Edwards indicated that her request was not unreasonable. She noted that she did not abuse appellant, but calmly instructed him to perform certain duties. Ms. Edwards further noted that she followed the necessary rules and regulations that govern the facility. She noted that she sought to treat appellant with dignity and respect. Ms. Edwards noted that appellant never requested to see a union representative regarding the matter. She indicated that she was unaware of the situation with another supervisor regarding a missing timecard. Ms. Edwards noted that appellant's job was not stressful as he never worked overtime; he was given adequate assistance in the performance of his job and he did not have specific quotas to meet. She noted that she was unaware of any conflict appellant may have with other employees, however, indicated that he may have a conflict with other supervisors because he had been denied a supervisor's position. Ms. Edwards noted that appellant was accommodated on November 30, 1999 as the other mailhandlers hung the mail sacks. She noted that appellant performed the duties of a distribution clerk although his job title was clerk keyer. Ms. Edwards indicated that appellant disliked keying and in order to assist him she made provisions so that he would be assigned to floor duty. Appellant chose to work the floor and she

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<sup>1</sup> In a notice dated November 30, 1999, supervisor Ms. Edwards noted that she was documenting the incident whereby appellant refused to perform duties specifically requested of him. She indicated that appellant should be sent for a fitness-for-duty examination.

permitted him to do so. She noted that appellant had an attendance problem and a poor attitude with regard to instruction.

In a decision dated August 10, 2000, the Office denied appellant's claim for compensation on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

By letter dated September 14, 2000, appellant requested reconsideration and submitted additional evidence. He submitted a report from Dr. Jackson dated July 12, 2000; several witness statements from coworkers; an arbitration settlement agreement dated December 12, 2000; a personal statement dated December 26, 2000; arbitration settlement agreements from coworkers who filed grievances; excerpts from an employing establishment handbook; a grievance appeal form; arbitration literature; and excerpts from a supervisors guide to handling grievances. The report from Dr. Jackson dated July 12, 2000, indicated that appellant was treated for work-related stress. He noted that appellant's symptoms of severe anxiety and panic attacks. He recommended appellant be placed outside the supervision of Ms. Edwards. Dr. Jackson diagnosed appellant with depressive disorder NOS and adjustment disorder with a depressed mood. The witness statements from a coworker Ronald Taylor, indicated that in November 2000 he remembered Ms. Edwards observing appellant and noted that she would frequently give appellant instructions to upset him. The witness statement submitted on September 12, 2000 indicated that he observed Mr. Winters, a supervisor, approach appellant regarding a time card. The witness statement from Richard Gates, indicated that in November 1999, he observed supervisor Ms. Edwards sit in a seat normally used by appellant during break time. Mr. Gates noted that the supervisor inquired as to whether she was sitting in appellant's seat and noted that appellant would not be sitting there during this break. He indicated that the supervisor knew this was where the craft employees sat at break and that it was her intent to upset appellant. Mr. Gates further indicated that he noticed appellant was treated differently than other employees by his supervisor. The arbitration settlement agreement noted that the 7-day suspension would be rescinded and appellant would be compensated for 20 hours of pay.

The employing establishment submitted a letter of contravention dated October 3, 2000. The employing establishment indicated that appellant failed to inform his supervisors of his work status when he left on September 17, 2000 and failed to return after his physician indicated that he could return to work. The employing establishment indicated that appellant's allegation that his stress was due to orders to perform job assignments was without merit. Employees are required to follow a supervisors instructions pertaining to assignments and it was considered a penalty to act otherwise. The employing establishment indicated that appellant had been a plant manager since 1998, however, when the annex closed down the clerks returned to their original workstation, the bulk mail center. This transition was due to operational needs and was not a personal act against appellant. The clerks were assigned to other areas when they were moved back to the bulk mail center, however, no one was discharged as a result of this transition.

In a decision dated March 8, 2001, the Office affirmed its decision dated August 10, 2000, on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

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. By decisions dated August 10, 2000 and March 8, 2001, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

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

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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

Appellant alleged harassment on the part of his supervisors. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>8</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>9</sup> In the present case, appellant's supervisor indicated that she requested appellant to hang mail sacks because there were no other duties available for him at that time. She noted that appellant ignored her instructions and walked away. Ms. Edwards noted that she proceeded to a supervisor's meeting and later learned that appellant had an active asthma condition. She noted that appellant further replied that he did not care what discipline she enacted against him. Ms. Edwards indicated that appellant was assigned the same position that he now holds and was aware of the necessity of replacing the sacks after dispatch of value and was the only clerk who was unwilling to hang the sacks. She indicated that her request was not unreasonable. Ms. Edwards noted that she did not abuse appellant, but calmly instructed him to perform certain duties. Ms. Edwards further noted that she followed the necessary rules and regulations that govern the facility. She noted that she sought to treat appellant with dignity and respect. Ms. Edwards noted that appellant's job was not stressful as he never worked overtime; he was given adequate assistance in the performance of his job; and he had no specific quotas to meet. She noted that she was unaware of any conflict appellant may have with other employees, however, she indicated that he may have a conflict with other supervisors because he had been denied a supervisor's position. Ms. Edwards noted that appellant was accommodated on November 30, 1999 because the other mailhandlers hung the mail sacks. She noted that appellant performed the duties as a distribution clerk although his job title was clerk keyer. Ms. Edwards indicated that appellant disliked keying and in order to assist him she made provisions to assign him to the floor. General allegations of harassment are not sufficient<sup>10</sup> and appellant has not submitted sufficient evidence to establish that he was harassed by his supervisor.<sup>11</sup> Appellant alleged that his supervisors made statements and engaged in actions which he believed constituted harassment. While the witness statements supplied by appellant to corroborate his claim indicated that Ms. Edwards and Mr. Winters would frequently give appellant instructions regarding duties to be performed and that appellant would get upset, this evidence is insufficient to corroborate that she harassed or discriminated against appellant.<sup>12</sup> The Board notes that vague allegations of a supervisor berating and taunting appellant are insufficient to establish appellant's claim that he was harassed. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties,

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<sup>8</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>9</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>10</sup> *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>11</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).

<sup>12</sup> *Dennis J. Balogh*, 52 ECAB \_\_\_\_ (Docket No. 99-1512, issued January 25, 2001).

employees will at times dislike actions taken.<sup>13</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,<sup>14</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: (1) on November 30, 1999 appellant was improperly assigned the duty of hanging mail sacks by Ms. Edwards even though appellant informed her that this duty would aggravate his asthma;<sup>15</sup> (2) appellant was harassed and questioned by his supervisor, Mr. Winter regarding his time card;<sup>16</sup> (3) appellant worked as a 204-B supervisor for eight years and was not promoted as he believed he should have been;<sup>17</sup> (4) on May 6, 1999 appellant requested he be permanently transferred to the day shift and this request was improperly denied; and<sup>18</sup> (5) appellant was improperly disciplined in the form of a 7-day suspension on December 23, 1999 and a 14-day suspension on

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<sup>13</sup> *Michael A. Deas*, 53 ECAB \_\_\_\_ (Docket No. 00-1090, issued November 14, 2001).

<sup>14</sup> *See supra* note 3.

<sup>15</sup> *See Barbara J. Latham*, 53 ECAB \_\_\_\_ (Docket No. 99-517, issued January 31, 2002) (the assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable); *see also Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988). (The Board finds that allegations such as improperly assigned work duties, which 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>16</sup> Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee. *Judy L. Kahn*, 53 ECAB \_\_\_\_ (Docket No. 00-457, issued February 1, 2002).

<sup>17</sup> Regarding appellant's allegation of denial of promotions, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position. Thus, appellant has not established a compensable employment factor under the Act in this respect. *See Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>18</sup> The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position; *see Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

May 9, 2000.<sup>19</sup> Appellant has not establish that the employing establishment erred or acted abusively with regard to these allegations. Thus, he has not established administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

Appellant has also attributed his emotional condition to being forced to work beyond his capabilities noting that he was diagnosed with asthma and that the job assignment of hanging sack aggravated his asthma condition. The Board notes that assignment of duties beyond an employee's work tolerance limitations can be a compensable factor of employment.<sup>20</sup> However, the record is void of any medical evidence that indicates that appellant was restricted from hanging mail sack due to an existing asthma condition. The Board notes that appellant's asthma condition was not an accepted work-related injury. On November 30, 1999 he was asked by his supervisor to hang sacks, appellant refused indicating that this activity would aggravate his asthma condition. The record indicates that the supervisor exercised her discretion and determined that appellant did not have medical restrictions, which encompassed hanging mail sacks. The Board notes that the assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.<sup>21</sup> Therefore, the Board finds that there is insufficient evidence to establish that appellant worked beyond her restrictions.

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<sup>19</sup> Regarding appellant's allegations that the employing establishment engaged in improper 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. Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee. See *Janet I. Jones*; *Jimmy Gilbreath*; *Apple Gate* and *Joseph C. DeDonato*, *supra* note 15.

<sup>20</sup> See *Kim Nguyen*, 53 ECAB \_\_\_\_ (Docket No. 01-505, issued October 1, 2001).

<sup>21</sup> *Supra* note 15.

The March 8, 2001 and August 10, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
December 11, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member