

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY M. DOUGLAS and U.S POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 01-870; Submitted on the Record;
Issued January 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

On March 9, 2000 appellant, then a 44-year-old letter carrier, filed a claim for an emotional condition alleging that on January 24, 1998 he was falsely accused of battery by a coworker. He stated that the employee had caused her coworkers and his wife "a lot of grief" and accused them of wrongdoings. Appellant stated that he went through a lot of stress defending himself in court and was finally found not guilty on June 22, 1999 after a bench trial. He stated that he sustained stress, post-traumatic stress disorder, severe emotional problems, anxiety and depression and gastrointestinal problems. Appellant indicated that he missed work from August 10 to November 20, 1998.

Appellant submitted disability notes from his treating physician, Dr. Michael S. Shapiro, a Board-certified psychiatrist and neurologist, and from another doctor dated from August 18 through November 10, 1998 stating that he was unable to work due to stress-related problems caused by his work situation.

By letter dated April 20, 2000, the Office of Workers' Compensation Programs informed appellant that more information was needed to establish his claim, including a statement from him describing the January 24, 1998 incident in detail and a comprehensive medical report from his physician identifying the work factors which contributed to his psychiatric condition.

By letter dated February 1, 2000, appellant stated that, on January 24, 1998, his coworker, Roohi Mohammed, who was eight months pregnant at the time, accused him of shaking her shoulders with both hands and shoving her into a wall. On January 24, 1998 she filed a misdemeanor complaint with the circuit court of Cook County, Illinois, alleging that appellant intentionally caused her bodily harm by shaking her shoulders with both hands and shoving her against a wall causing her back pain. Appellant stated that Ms. Mohammed filed a

false workers' compensation claim for blunt trauma and back contusions regarding the January 24, 1998 incident.

Appellant stated that his wife and other employees at the employing establishment had problems with Ms. Mohammed. He stated that, on January 24, 1998, the Paltine Police questioned him as to what happened and he told them he did nothing to Ms. Mohammed. Appellant stated that the postal inspectors tried to question him but he refused on the advice from the union steward. He stated that the inspectors asked he and his wife, separately, if he had ever hit her or their baby. Appellant stated that the "line of questioning was very upsetting" to him and his wife. He stated that the postmaster, Richard Culleton, sent him home after 10:00 a.m. on January 24, 1998 and placed him on emergency placement in an off-duty status. Appellant stated that later the same day the Palatine police officer, Brian Leal, whom he had talked to earlier, wanted him to come in immediately and talk some more. He stated that he thought he needed a lawyer, he was "very upset" and "very nervous" that Ms. Mohammed was going to file charges against him. Appellant stated that when he asked the postmaster why he believed Ms. Mohammed, appellant told him it was because he was friends with Ms. Mohammed's husband, which he denied. Appellant stated that it was very stressful for him to hire a lawyer, pay the legal fees, make many court appearances and that being out of work with no money to see doctors and the lawyer was an "extreme hardship" on his family. He stated that the postmaster made it "very difficult" for him as he had supervisors try to intimidate his witnesses, making them believe they would not be paid if they went to court to testify on his behalf.

Appellant stated that he returned to work on February 23, 1998 after not having been paid a month due to his suspension. He stated that he missed time from work from August 12 through November 16, 1998 and from June 11 through July 20, 1999 due to his emotional problems.

Appellant referred to an arbitration hearing and the "Regular Arbitration Opinion and Award," in which he won the arbitration on September 25, 1998 and was found not to have assaulted Ms. Mohammed. In the September 25, 1998 arbitration award, the arbitrator noted that Supervisor Stoops and employees present at the time of the alleged January 24, 1998 incident found that appellant "appeared calm and collected" and Ms. Mohammed was not "disheveled or mussed." The arbitrator noted that witnesses stated appellant was carrying a cup of coffee at the time of the alleged assault. The arbitrator also noted that, although Ms. Mohammed claimed that she bruised her back when appellant allegedly assaulted her, the doctor at the Northwest Community Hospital found no bruise on her. The arbitrator noted that several individuals were willing to testify that Ms. Mohammed was a "racist, agitator and quite capable of fabricating such an incident." The arbitrator also noted that Ms. Mohammed benefited from the alleged incident by getting additional time off through workers' compensation and continuation of pay at a time when other leave categories had been depleted and additional time was needed due to her pregnancy. The arbitrator concluded that Ms. Mohammed lacked credibility and appellant's suspension should have been terminated at least two weeks earlier than it was. The arbitrator ordered the employing establishment to make appellant whole for all back pay and benefits lost as a result of the suspension in excess of 14 days.

By letter dated May 9, 2000, the employing establishment stated that it changed Ms. Mohammed's work hour schedule to a night shift so that "she would not have very much

visual and physical contact with” appellant and his wife. The employing establishment noted that at trial appellant was found guilty but upon appeal, was found innocent of assault.

The hearing transcript of the trial in the circuit court of Cook County dated October 29, 1998 is of record. One witness reiterated that appellant looked “normal,” “calm and collected” and Ms. Mohammed did not look disheveled at the time of the alleged assault. Other witnesses observed appellant had coffee in his hand. At the hearing, appellant denied he ever assaulted Ms. Mohammed on January 24, 1998. No employees witnessed any assault although they heard Ms. Mohammed say that appellant pushed her.

In the hearing transcript of the trial at the circuit court in Cook County dated June 23, 1999, the judge noted that one doctor stipulated Ms. Mohammed was bruised on her back and another doctor said there was no bruising. The judge concluded that there was insufficient evidence beyond a reasonable doubt to establish that appellant was guilty.

In a report dated June 20, 2000, Dr. Shapiro considered appellant’s history of injury, performed a mental status examination and diagnosed post-traumatic stress disorder and gastritis. He stated that “[t]here was not doubt in [his] mind” that appellant’s psychological decline was the direct result of the January 24, 1998 incident.

By decision dated November 29, 2000, the Office denied the claim, stating that the evidence of record failed to establish that the claimed injury occurred in the performance of duty.

The Board finds that the case is not in posture for decision.

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.¹ 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.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claimed compensation was caused or adversely affected by employment factors.³ Appellant must also submit rationalized medical

¹ 5 U.S.C. §§ 8101-8193.

² *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991).

³ *Marguerite J. Toland*, 52 ECAB ____ (Docket No. 99-1989, issued March 9, 2001).

opinion evidence that he has an emotional condition or psychiatric disorder causally related to the identified compensable employment factors.⁴

The Board has held that investigations are administrative functions of the employing establishment and do not involve an employee's regular or specially assigned duties, therefore, are not considered employment factors unless management acted unreasonably or abusively.⁵ The employing establishment's suspension of an employee is also regarded as an administrative duty and is compensable only if management acted unreasonably or abusively.⁶

In this case, following Ms. Mohammed's accusation that appellant assaulted her on January 24, 1998, the employing establishment investigated the charge by asking appellant about the incident, of which some questions were offensive to him. This constituted a personnel matter and does not constitute a compensable factor of employment as appellant has not shown that management acted unreasonably or abusively.⁷ Further, disputes and altercations between employees are not compensable factors provided management did not act unreasonably or abusively in handling the problem.⁸ Appellant has not shown, as he contended, that the postmaster sided with Ms. Mohammed because he was friends with her husband or that the postmaster had supervisors intimidate potential witnesses at appellant's trial to discourage them from attending.⁹ In a May 9, 2000 letter, the employing establishment stated that it reassigned Ms. Mohammed to the night shift in order for her and appellant not to have any interaction with each other.

Appellant also contended that the employing establishment's approximate month-long suspension of him from January 24 through February 21, 1998 was a compensable factor of employment. The suspension, however, constituted a disciplinary action and therefore was a personnel matter. Although, in the September 10, 1998 arbitration award, the arbitrator found that appellant was entitled to back pay and benefits lost in excess of the 14-day suspension, the arbitrator reduced the length of the suspension by half; he did not completely remove it. The arbitrator's reduction of the length of the suspension does not establish that management erred or acted abusively in suspending appellant.¹⁰ Appellant did not establish that management's issuance of a suspension was a compensable factor of employment.

The circuit court of Cook County found that appellant was not guilty of assaulting Ms. Mohammed on January 24, 1998. Its verdict establishes that, subsequent to the arbitration

⁴ *Fred Faber*, 52 ECAB ____ (Docket No. 99-1256, issued October 10, 2001).

⁵ *Ruth S. Johnson*, 46 ECAB 237, 241 (1994); *Bernard Snowden*, 49 ECAB 144, 149 (1997).

⁶ See *Frank A. McDowell*, 44 ECAB 522, 525-36 (1993); *Alice M. Washington*, 46 ECAB 382, 389, 391-92 (1994).

⁷ See *Bernard Snowden*, *supra* note 5.

⁸ See *Josie P. Waters*, 45 ECAB 513, 517-18 (1994).

⁹ See *Marguerite J. Toland*, *supra* note 3.

¹⁰ See *Sharon R. Bowman*, 45 ECAB 187, 194 (1993); *Frank A. McDowell*, 44 ECAB 522, 525-26 (1993);

award, appellant was harassed by Ms. Mohammed who continued to charge him with false accusations and filed false claims in court. Appellant has established a compensable factor in this regard. The case will be remanded for the Office to address the medical evidence and determine whether the factor of Ms. Mohammed's continuing to make false accusations against appellant and filing false claims in court caused or contributed to appellant's emotional condition.¹¹ After any further development it deems necessary, the Office shall issue a *de novo* decision.

The November 29, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC
January 4, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹¹ See *Fred Faber*, *supra* note 4.