

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFERY L. MOHR and U.S. POSTAL SERVICE,
POST OFFICE, North Hollywood, CA

*Docket No. 01-534; Submitted on the Record;
Issued November 15, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On June 19, 1995 appellant, then a 39-year-old carrier, filed an occupational disease claim (Form CA-2), alleging that his stress was due to his employment.¹

In a June 19, 1995 statement, appellant detailed employment factors that he believed contributed to his stress condition. Factors included a 1989 robbery when he was robbed at gunpoint with some other employees. He also questioned why he received no recognition for his actions in this robbery. In addition, appellant alleged that he became stressed when he was followed by investigators after the 1989 robbery which he stated was because they thought he might be robbed. Other employment factors that contributed to his stress were the chronic shortage of required equipment,² his inability to complete duties in the time allotted or meet strict deadlines and being required to work overtime. In addition, appellant noted that in January or February 1995 a threatening note had been left at an apartment building where he was delivering mail. The note did not identify appellant, but was addressed to the carrier delivering the mail. The note, found by appellant, referred to unidentified tenant's frustration regarding misdirected mail and requested the carrier to correct this problem or else. In 1991, appellant noted that he found a suspicious package, which he gave to the clerks inside and told them his suspicions regarding the package. He also attributed his stress to being told not to wear a sweatband by his supervisors. Appellant alleged that he was harassed by management and became stressed by the tension between drivers, dock crew and supervisors due to equipment shortages. He noted that there was a tense and difficult relationship with supervisors which contributed to his stress. The tension and difficult relationship with his supervisors included not being given 24-hour notice

¹ Appellant stopped work on May 18, 1995.

² Appellant noted equipment that he required included "1046 hampers, BBs, empty express sacks, 775 tubs and trays if so ordered."

that he would be followed on February 15, 1995 by Ed Myles, a supervisor; his six express deliveries on February 15, 1995 were taken away by Mr. Myles and Rena Sperdakos; Postmaster Herbet accused him of parking illegally in the parking lot on February 16, 1995; Christie Bell, a supervisor, wrote him up for having an unlocked door on his truck on February 16, 1995 even though the truck was within appellant's vision; Mr. Myles questioned appellant about the validity of the hit and run he observed on January 20, 1995 which made appellant late for work; not being allowed to pick up express mail on May 9, 1995 even though it was part of his bid job; carrying mail off routes on May 10, 11, 15 and 16, 1995; arguments between appellant and his supervisor regarding vehicle repair tags and the attempted disciplinary action for appellant for allegedly exceeding the time necessary for a comfort break. Other causes of his employment stress included being required to get a class B drivers license, receiving disciplinary actions, receiving warning letters, denial of leave, denial of step increases, not being recognized for his actions during robbery, cold shoulder by management, being required to show receipts for the purchase of gas, verbally assaulted by a man at Gold's gym who believed appellant blocked the alley, told to park illegally to pick up mail, schedule changes, asked to work overtime or help others with their routes and required to do other tasks. Lastly, appellant alleges that he was harassed for keeping track of cross crafting violations in 1994.

In a May 19, 1995 report, Nader F. Nowparast, Ph.D., opined that appellant was temporarily totally disabled due to work-related stress. He noted that appellant had symptoms of anxiety, somatic complaints and depression. Dr. Nowparast, in a June 26, 1995 report, diagnosed severe depression and anxiety, somatoform disorder and general anxiety disorder which was work related. Appellant related incidents of abusive treatment by his supervisor and manager as the causes of his stress.

In a statement dated August 1, 1995, Milo Normile, a coworker, noted that appellant had "experienced disputes with concerns of safety and functionable [sic] vehicles which were deemed unsafe upon vehicle inspection by [appellant]." Mr. Normile stated that he had been called into Alex Silva's office and "asked to sign a statement acknowledging that [appellant] had sexually harassed a female employee" a few years ago and that he refused to sign the statement as he believed the accusations were biased and not credible against appellant.

Monica Basse, a coworker noted that appellant came into the employing establishment with a box which "he stated to me and the other clerks that this box could be a bomb and he is [not] going to put it on his truck" in an August 17, 1995 statement. Ms. Basse indicated that she could not recall the date this event occurred.

The employing establishment filed a response and controversion to appellant's emotional claim by Lloyd A. Fradkin, supervisor customer service at North Hollywood. Mr. Fradkin denied appellant's allegations set forth in appellant's June 19, 1995 statement.

In an August 25, 1995 response by Christi Bell, manager customer service at Studio City, noted that appellant filed grievances when he was required to carry mail and contended that he was a disgruntled employee.

Rena Sperdakos, supervisor customer service at Studio City, denied appellant's statements in an August 29, 1995 response.

Appellant, in response, submitted various grievances filed in 1995 which were settled or because the Union withdrew the grievance.

In an undated statement, Cip Montoya, a coworker, noted that appellant's supervisor attempted to discipline appellant for "exceeding necessary comfort breaktime" and that, after discussing this with the Postmaster, the charges were dismissed. Regarding the suspicious package³ incident, Mr. Montoya noted that he had "conferred with [appellant] upon his return to Laurel Canyon about a package that was removed and given to the window clerks at the Toluca Lake Post Office." He also noted that Janet Cabe, the station manager, had told appellant that "he had a bad attitude" and that appellant asked him "to explain the constant petty grievances which had been filed repeatedly by management disciplinary attempts at him." Mr. Montoya did not provide any dates for these events.

In an undated statement, Olive Jacobson, a neighbor, noted that appellant witnessed a hit and run accident on January 30, 1995 at which time he followed the vehicle, got the license number and reported it to the police. He requested Ms. Jacobson "to remember our conversation because the [employing establishment] would try to get him in trouble for being late to work."

Appellant submitted a copy of the threatening note he found while delivering mail at 10900 Bluffside Drive. The note was addressed to the mail carrier and stated it was warning that the fed up tenants had "decided to take [l]egal [a]ction and other punitive measures against the carrier if the" delivery problems were not corrected. It concluded with "[f]ix this problem or pay."

In an undated noted, James Evans, a tenant at 1900 Bluffside Drive, attested to appellant showing him the threatening note that he found in that building in January or February 1995.

Officer Roy McIntosh verified that he was one of the police officers who responded to the 911 call made by Irma Castro, a coworker, in September 1994 when appellant reported that he was verbally threatened by a man leaving Gold's Gym while loading his postal truck. The license tag of the vehicle driven by the individual who had threatened appellant was taken down.

In a decision dated April 23, 1996, the Office denied appellant's claim on the basis that he failed to establish that his emotional condition was due to his employment. Specifically, the Office found that appellant had failed to identify any compensable factors of employment.

By letter dated May 26, 1996, appellant requested a hearing, which was held on March 28, 1998.

In an April 13, 1998 letter, the employing establishment detailed problems with appellant's claimed incidents to the hearing representative.

By decision dated July 13, 1998, the hearing representative affirmed the denial of benefits on the basis that appellant failed to establish any compensable factors of employment.

³ Mr. Montoya noted that Ms. Janet Cabe, station manager, had initiated a fact finding regarding this event, but failed to state why the package was deemed suspicious.

On July 13, 1999 appellant's counsel requested reconsideration and submitted evidence and arguments in support of his request. In support of his request, appellant submitted a June 15, 1999 report by Dr. Nowparast; a June 22, 1999 bill detailing psychological services provided by Dr. Nowparast; a June 27, 1999 statement by Robert W. Schultz and Phyllis M. Schultz, appellant's stepfather and mother; a July 12, 1999 statement by appellant; a July 12, 1999 statement by James Hayes and Isabelle Bailey regarding the threatening message that appellant found; a July 9, 1999 statement by Peter Victorino; a July 12, 1999 statement by Isabelle Shepherd-Bailey; notes dated September 21 and December 20, 1990 asking appellant to help other people; an unsigned statement by (the first name is illegible) Maantouk; a July 12, 1999 statement by Jim Hayes; an undated statement by appellant detailing his schedule on February 4, 1995; a July 9, 1999 Jackie Bugarin; a July 11, 1999 and undated statements by Ron Gore; attachment 13; a September 20, 1996 statement by Irma (Angel) Castro; a September 30, 1997 statement by Michael Estes; and an August 1, 1995 statement by Milo Normile.

In an August 23, 1994 statement, Sheila Pappas, a switchboard/rideshare coordinator at Laurel Canyon Carrier Annex verified that appellant was a carpooler and that he had been authorized "to park in the space vacated by the postal truck he drives daily."

In a June 10, 1996 statement, Irma Castro, a postal employee, noted that appellant had a confrontation with an unknown individual at the back entrance of the Valley Place Post Office in September 1994. Appellant requested that she call 911 because "he had been verbally assaulted and a threat of physical violence was asserted against [appellant] by the unknown weight lifter if he went back outside to his truck parked in the alley."

In a December 31, 1996 report, Dr. Nowparast diagnosed major depression, somatoform disorder and an obsessive compulsive personality disorder. He noted that appellant was able to return to work, provided that he had no interaction with his previous supervisor, that he not be returned to his job at Studio City and that he not perform job tasks or assignments outside those required for driving a truck.

In an undated statement, Ron Gore, a clerk at Studio City Post Office, observed Rena Sperdakos, a customer service supervisor, challenge appellant's late return to the office on May 17, 1995. He heard Ms. Sperdakos call appellant pathetic and that she acted unprofessionally and was disrespectful towards appellant.

In an undated statement, Carol Christensen, a coworker, detailed events regarding the February 4, 1991 robbery and noted that there had been a robbery in 1989. She stated that appellant and Michael Estes had been present when this same office had been robbed on March 24, 1989. She noted that appellant had not been present during the February 4, 1991 robbery incident.

In a January 28, 1997 statement, Mr. Estes, a coworker, noted that subsequent to the robbery in 1982 appellant related that an individual had impersonated a postal inspector and that this person had frightened appellant as he had come from behind appellant on the truck ramp. Next, Mr. Estes noted that the employing establishment would make appellant go on Mr. Estes' truck run when Mr. Estes' was off work. Regarding equipment shortages, Mr. Estes noted that the problem was not a seasonal/Christmas problem but was an ongoing problem. He stated that

“[t]here was an ongoing problem getting hampers/1046’s for the finance offices and the Universal Studio’s mailroom” and if Mr. Estes did not bring the equipment with him then he would find the mail on the floor which required him to return to North Hollywood to empty the 1046’s.” Mr. Estes stated that he “had frequent discussions with AM supervisors to make sure empty hampers/1046’s would not be shipped back to Van Nuys, as there were never enough hampers between my truck route and the collection drivers, including [appellant].” Lastly, Mr. Estes related the conflicting statements regarding where truck drivers could park.

Tom McLemore, a coworker, in an October 4, 1997 statement, supported appellant’s allegation that there were equipment shortages at the North Hollywood offices. He stated that the shortages were due to underestimation by the managers regarding the daily needs of the drivers. Mr. McLemore stated that he had seen appellant “being removed from his job and to be [sic] given a direct order to fill in for Mr. Estes or other absent drivers without compensation in out of schedule or T-6 pay.”

In a second September 30, 1997 statement, Mr. Estes supported appellant’s allegations regarding equipment shortages, time constraints problem, difficult to get time off because there were not replacement drivers for large vehicles. Regarding the equipment shortages he stated that “[s]ometimes there were not enough to scavenge and we would have to use other equipment such as BB’s and BMC’s.” As to the March 24, 1989 robbery, he stated that the only employees present were he, Mr. Mohr and June Hui Hui. At the time of the robbery, appellant was accosted by a man with a gun who entered his truck. Appellant was forced by the robber to walk into the office where appellant and Ms. Hui were. Mr. Mohr noted that he suggested the robber put them in a closet to keep them out of the way. Mr. Mohr also noted that he would be shot by the robber based upon the looks the robber gave appellant. Subsequent to the robbery they “were kept, questioned and made to make statements [until] approximately 10:00 that night.” At no point were any of them offered counseling after the 1989 robbery.

Appellant submitted copies of settled grievances regarding appellant’s parking his vehicle, that the absent without leave (AWOL) charge on December 9, 1994 would be changed to leave without pay (LWOP) because appellant made a reasonable attempt to call in that day and denial of step increases in 1988.

Appellant’s mother and stepfather, Mr. Schultz and Mrs. Schultz, related the change in appellant’s demeanor subsequent to the 1989 robbery.

In his June 15, 1999 report, Dr. Nowparast diagnosed major depression, somatoform disorder, post-traumatic stress disorder (PTSD), schizoid personality trait and avoidant personality traits. The psychologist attributed appellant’s psychiatric condition to the March 24, 1989 robbery when appellant was threatened at gunpoint. In support of this conclusion, Dr. Nowparast opined that “the type of emotion injury suffered by [appellant] as the result of the threat to his life on March 24, 1989, that disrupted his ability to seek help.” In addition, he noted:

“The anxiety symptoms as the expression of long-term untreated PTSD includes marked fears of stranger, unfamiliar places and unexpected events, as well as feelings of suspicion, distrust and apprehension toward any stimulus which

reminds, resembles and symbolizes different aspects of the traumatic event. During the six-year period between 1989 (when the robbery occurred) and 1995 (when [appellant] became occupationally disabled due to major [d]epression), [appellant] experienced not only the long-term untreated PTSD symptoms as expressed in anxiety, depression and somatoform symptomatology, but also aggravation and exacerbation of such symptoms brought about by the following job-related stressful events which are, indeed, the *accepted facts*:⁴

(A) A package looking highly suspicious by [appellant] who gave it to the Manager trainee and informed him of his suspicion of its dangerousness (1991).

(B) [Appellant] was aggressively and stressfully confronted at Gold's Gymnasium in September of 1994. He called the local police and told Angel Castro (T-6 of the office) about the incident.

(C) [Appellant] found a threatening handwritten note in January-February 1995 indicating that "they will get him."

In addition, the psychologist opined that the employing establishment had subjected appellant "to a series of stressful job-related maltreatment induced by his supervisor/manager's verbal and emotional harassment and intimidation" and that appellant was unable to "meet the rigid demands of his job tasks in the allowable time limits" due to his untreated PTSD.

Peter Victorino, a coworker, in a July 9, 1999 statement, supported appellant's allegation regarding the lack of help in getting things fixed, that it was hard to get work done in time and appellant's harassment by Jim Smith. Mr. Victorino noted that he spent approximately 15 percent of his time in maintaining postal vehicles in and that he "was always rushing and always running late" as was appellant and that there was constant pressure to meet the schedule. Regarding a safety check, he noted that there was insufficient time to perform one and that he had been told to ignore problems.

In a July 9, 1999 statement, Jackie Bugarin, a supervisor, reviewed an August 17, 1988 suspension which was allegedly based on complaints made by her regarding appellant. She denied that appellant ever called her names or that she had complained about problems between her and appellant. Ms. Bugarin agreed with appellant's allegation that the equipment was not in good repair and that help was unavailable. She also supported appellant's allegation that employees at the employing establishment were treated with disdain by supervisors during the period she worked at the employing establishment, 1984 through December 1997.

In a July 11, 1999 statement, Mr. Gore stated that he heard Ms. Sperdakos refer to appellant as pathetic and use a sarcastic tone when telling him to get rid of sweatband on May 19, 1995. According to Mr. Gore, Ms. Sperdakos "was always sarcastic with employees," that she never corrected other employees on the postal uniform issue and that he believed appellant "was particularly picked on by Rena on this occasion and others." He related that

⁴ These are not based upon a statement of accepted facts as set forth by the Office.

Ms. Sperdakos “used to follow [appellant] around at Studio City with a clipboard” and that she questioned appellant regarding “the amount of time it took him to do each little activity involved in the collection run.”

In a July 12, 1999 statement, Ms. Shepherd-Bailey, a coworker, testified that she heard Ms. Sperdakos (appellant’s supervisor) in November 1993 berating him by telling him “he was useless and needed to get his act together, that he was late for such a simple job.” She also supported his allegations regarding the broken equipment and the difficulty in keeping to a schedule. Regarding the lack of equipment, she noted that 1046 tubs were constantly in short demand, that “[m]ost of the time the amount on the truck was not enough” and “often clerks or other employees would seized (sic) the tubs immediately and hide them for their own uses -- to cover their own equipment shortages.” Lastly, she noted that appellant was very concerned with equipment repair and safety and that this “attention to safety really upset Postal Managers.” One time in either 1990 or 1991 she heard appellant inform Mr. Fradkin that a ramp was broken and that Mr. Fradkin told appellant “to go back and unload his truck what ever way he could and not bother him.”

In a July 12, 1999 statement, Jim Hayes, a coworker, stated that appellant was bothered by clerks driving collection runs and that appellant was asked to document this activity by the union. Regarding collection runs, Mr. Hayes stated that it was a “very stressful and frustrating job” due to a lack of equipment, the fact that the vehicles were not kept in good repair and the lack of time to perform a safety check. He stated that one day appellant was in a hurry and requested his help in finding some equipment. Approximately 15 minutes later he returned with the equipment because if the equipment had not been found appellant “would get shouted at by Ed Castaneda or whatever supervisor happens to be around.” One equipment problem involved security straps to tie packages in the vehicle. Mr. Hayes noted that the straps were useless which required the parcels to be hand loaded into the truck and that the parcels would roll around in the truck due to the lack of straps which caused a slow down in the work. Next, he noted that “the collection runs are so hectic there is no real time for real breaks or lunches” and that they start out late due to the lack of equipment, mail sacks, express mail. Lastly, he noted that he had seen other employees wearing nonregulation clothes such as mouse ears, ties with cartoon characters and Santa Claus hats.

Appellant, in his July 12, 1999 statement, related various work events he believed caused his condition. Regarding the robbery on March 24, 1989, he detailed that it was about 5:30 p.m. and he feared for his life and the lives of his coworkers, Mr. Estes and Ms. Hui, when the robber directed them into a supply cabinet. He stated that he “felt extremely terrified, helpless,” that he had trouble breathing and was sweating and the robber threatened to blow their heads off if they left the supply room early. A week later he was followed by postal inspectors which caused him to think that he would be robbed again and he felt very threatened. As to the suspicious package, he stated in 1991 he “removed a parcel from one box and it looked like something was wrong with the box” as the paper was stained with something that felt slinky or jelly like and the wrapping was loose. He stated that he thought about the 1989 robbery when he took the box inside and informed the clerks of his suspicions regarding the package. Next, appellant noted that Mr. Silva accused him of taking 20 minutes for a comfort break although he was subsequently reimbursed for the lost time due to this incident. In September 1994, while loading his vehicle parked next to Gold’s Gym, he was “accosted by a patron of the gym” who “left his

vehicle and got right in my face, yelling obscenities and threatening to ‘kick my ass.’” Appellant reported the incident to Ms. Castro and the police as he feared the person would attack him. He noted that there was tension management regarding tags and that he had been “verbally abused because of my diligence in tagging vehicles in disrepair” as “[t]agging vehicles interfered with production and was not welcomed under any circumstances.” An example was given of his attempting to report a mechanical problem with a nine-ton vehicle in January or February 1995. A brake switch had broken off and when he attempted to call his supervisor, Ms. Sperdakos, she “asked questions and then would not let me respond.”

By merit decision dated March 24, 2000, the Office denied appellant’s request for modification.

On August 1, 2000 appellant’s counsel requested reconsideration and submitted evidence and argument in support of his request. The evidence submitted included a copy of a November 22, 1999 Merit Systems Protection Board decision reversing the denial of appellant’s application for disability retirement, a copy of a handwritten threatening note addressed to the mail carrier and affidavits regarding this note by James Evans, a property manager for Carlo Property Management.

On November 17, 2000 the Office denied appellant’s request for modification.

The Board finds that this 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.⁵ 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.⁶

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.⁷ 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.⁸

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.⁹ 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.¹⁰

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 April 23, 1996, July 13, 1998, March 24 and November 17, 2000, 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.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluations, wrongly denied leave, improperly assigned work duties and unreasonably monitored his activities at work, 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.¹¹ 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.¹² 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 of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³ In the instant case, there is no evidence that the employing establishment acted unreasonably. Appellant alleged that the employing establishment's disciplinary actions, two suspensions, were erroneous or abusive. Although these suspensions were reduced to letters of warning and lost wages were repaid through the grievance process, such settlements are not sufficient to establish error or

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁰ *Id.*

¹¹ See *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).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

abuse.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers 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.¹⁵ 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.¹⁶ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and in support of his contention appellant submitted affidavits from Mr. Normile, Mr. Montoya, Mr. Gore, Mr. Hayes and Ms. Shepherd-Bailey.¹⁷ Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁸ Appellant has not shown how such an isolated comment by Ms. Sperdakos calling appellant pathetic on May 19, 1995 would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.¹⁹ Thus, he has not established a compensable employment factor with respect to the claimed harassment and discrimination.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.²⁰ In *Joseph A. Antal*,²¹ a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Lillian Cutler*,²² found that the claimant was entitled to compensation. In *Georgia F. Kennedy*,²³ the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including

¹⁴ *Kim Nguyen*, 53 ECAB ____ (Docket No. 01-505, issued October 1, 2001).

¹⁵ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁶ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁷ *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).

¹⁸ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

¹⁹ *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

²⁰ *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

²¹ 34 ECAB 608, 612 (1983).

²² 28 ECAB 125 (1976).

²³ 35 ECAB 1151 (1984).

an unusually heavy workload and imposition of unreasonable deadlines. Appellant has submitted evidence, witness statements, supporting his allegation that he had unreasonable deadlines and that his stress was due to attempting to meet his deadlines. The Board has held that conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.²⁴ In the instant case, appellant has alleged that his stress was due in part to the time constraints imposed by his job and the lack of equipment which added to the time he had to spend performing his job. Supporting documentation include affidavits from Mr. Estes, Mr. McLemore, Mr. Victorino, Mr. Hayes, Ms. Shepherd-Bailey and Ms. Bugarin all supported appellant's allegations regarding the lack of equipment and the difficulty in trying to keep to a schedule. The Board finds that appellant has established a compensable factor of employment with respect to his attempting to meet his work deadlines.

Appellant also attributes his stress to the 1989 robbery the threatening note left for the postal carrier at an apartment building and he was verbally assaulted by someone at Gold's gym who believed appellant blocked the alley while he was dropping off mail. The record supports the fact that these events occurred and were in the performance of duty. There is no evidence showing that the events did not occur and appellant has submitted witness statements. Thus appellant has established a compensable factor with regards to the March 24, 1989 robbery, the threatening note he found while delivering mail in 1991 and the verbal assault by a patron of Gold's gym which occurred while he parked the mail truck and was loading his truck.

As appellant has substantiated compensable employment factors, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.²⁵ In the instant case, Dr. Nowparast attributes appellant's stress to the March 24, 1989 robbery, the 1994 incident when appellant was threatened by a patron of Gold's Gym and the threatening hand written note appellant found in early 1995. After such development as it deems necessary, the Office should issue an appropriate merit decision.

²⁴ *Trudy A. Scott*, 52 ECAB ____ (Docket No. 99-1670, issued March 14, 2001).

²⁵ *See William P. George*, 43 ECAB 1159 (1992).

The decision of the Office of Workers' Compensation Programs dated November 17, 2000 is hereby set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
November 15, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member