

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARLOS HAMLIN and U.S. POSTAL SERVICE,  
PECK SLIP STATION, New York, NY

*Docket No. 02-1450; Submitted on the Record;  
Issued November 13, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty.

On June 8, 2001 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim alleging that on May 19, 2001 he sustained an emotional condition due to factors of his federal employment. Appellant stopped work on May 19, 2001 and has not returned to work.

By letter dated July 10, 2001, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that appellant submit additional factual and medical evidence supportive of his claim. Appellant submitted additional evidence in response to the Office's letter.

In a decision dated August 17, 2001, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a January 4, 2002 letter, appellant, through his counsel, requested reconsideration of the Office's decision.

By decision dated March 20, 2002, the Office denied modification of the August 17, 2001 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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where

disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.<sup>1</sup>

Perceptions and feelings alone are not compensable. 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 factors of his federal employment.<sup>2</sup> To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>3</sup>

Appellant has attributed his emotional condition to harassment by his supervisor, Ralph Colon. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment, may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable.<sup>4</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment occurred.<sup>5</sup>

Appellant alleged that on April 27 and May 9 and 12, 2001 he was verbally abused by Mr. Colon. Appellant alleged that Mr. Colon made offensive comments to him concerning his inability to perform his job duties and the money that could be saved if he retired.

Appellant contended that on May 2, 3, 8 and 12, 2001 he was assigned duties specifically the delivery of mail, that he was unable to perform due to his back condition. Appellant stated that in response to his refusal to perform the assigned work duties, Mr. Colon remarked, "why don't you retire" and berated him in front of his coworkers. Appellant indicated that on May 12, 2001 he informed Mr. Colon that he was going to see his physician because his back was hurting after standing for a prolonged period of time. He noted that Mr. Colon's response was that he would not get paid for the day if he did not return to the office with a physician's note.

Appellant stated that he returned to work on May 17, 2001 and worked for six hours when he was told that Mr. Colon wanted him off the work floor. Appellant noted that when he

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

<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Jack Hopkins, Jr.*, 42 ECAB 818m 827 (1991).

<sup>5</sup> *William E. Seare*, 47 ECAB 663 (1996).

asked Mr. Colon about his pay for the next two hours, Mr. Colon responded that it was not his concern and that he should take up the matter with the labor board.

On May 18, 2001 appellant stated that he gave Mr. Colon a physician's note for his absence and that Mr. Colon told him that he was only going to be paid for May 15 and 16, 2001 and not for May 12, 2001. Appellant indicated that he went to his union delegate about this situation and was told to apologize to Mr. Colon and Pat Samuels for leaving early if he wanted to be paid for May 12, 2001. Appellant stated that he did not feel that he had done anything wrong and he refused to apologize. Appellant also stated that although he worked over three hours on May 12, 2001 he was not paid for the entire day. Appellant indicated that he reported this incident to his station manager, Anthony Carlo, who responded that he would straighten things out and wanted him to sort the mail on route 1 beginning at 6:00 a.m. on May 19, 2001.

Appellant contended that when he reported to work on May 19, 2001 at 6:00 a.m., Mr. Colon questioned his start time and told him that his start time was 6:30 a.m. and that he was not going to be paid for clocking in at 6:00 a.m. Appellant also contended that previously, on April 28, 2001 Mr. Colon questioned him about his start time at 6:00 a.m. while he did not question the female substitute carrier who started work at the same time.

Appellant alleged that at approximately 7:00 a.m. on May 19, 2001 Mr. Colon put him on a different assignment that was not within his physical limitations. Appellant stated that, at 9:00 a.m., he went to use the restroom and there was no soap. Appellant related that Mr. Colon refused to provide him with soap and told him that he did not have permission to go to the restroom. Appellant stated that Mr. Colon told him that he only needed to wash his hands at lunchtime and by that time he would have soap. Appellant then stated that Mr. Colon came to his route with a scale and bench and told him that he was going to sit and observe him for the remainder of the day and that he did not want him leaving the route. Appellant told Mr. Colon that he had been standing for a prolonged period of time and that he needed to sit down for a while. Appellant related that Mr. Colon told him to go to lunch and wash his hands when he got upstairs. Appellant stated that, since he normally performed things that he was not supposed to do, he took his medication after 12:00 p.m. so going to lunch after 9:00 a.m. was too early. Appellant indicated that, while going upstairs, he started to feel a pressure sensation around the left side of his chest where his heart is located and he came back downstairs to tell Mr. Colon that he was having chest pain and that he needed medical attention. Appellant stated that Mr. Colon told him that the medical unit was closed and that he would have to see his personal physician and bring a physician's note when he returned to work. Appellant indicated that, since it would take him over one hour to get to his physician's office, he went to an assistant union delegate to explain his chest pain and need for medical attention. Appellant stated that the union delegate told Mr. Colon that he could at least allow a driver to take appellant to the nearest hospital. Mr. Colon responded by walking with appellant to a hospital located approximately four city blocks from the employing establishment.

Mr. Colon denied appellant's allegations. Mr. Colon stated that at no time did he tell appellant to retire. A statement from an employing establishment carrier whose signature is illegible indicated that appellant and Mr. Colon regularly joked around about the volume of the mail at the employing establishment. The employee stated that their conversations were full of laughter and did not concern retirement.

Mr. Colon denied assigning appellant duties that were outside his physical limitations. He noted that at times appellant asked to deliver the mail because he did not want to stay indoors. Mr. Colon further noted that he advised appellant to stay within his limited duties and to ask for help when necessary. He stated that on May 12, 2001 he asked appellant to deliver mail with another carrier because he wanted to ensure that appellant was going to work within the limits of his light-duty status and that he would be able to rest when necessary.

Regarding appellant's allegation that he was watching him on the work floor, Mr. Colon stated this was not the case. He stated that appellant occasionally saw him on the work floor observing carriers casing the mail. He further stated that as part of his managerial duties he walked the work floor to oversee that the carriers were casing the mail and collecting their express, certified, postage due and priority confirmation mail to ensure timely delivery to customers.

Mr. Colon denied appellant's allegation that he found the medical documentation submitted by appellant on May 18, 2001 unsatisfactory. He stated that appellant never gave him any medical documentation, rather, appellant submitted the medical documentation to his supervisor Mrs. Samuel and thus, the alleged conversation between him and appellant never took place.

Concerning his actions on May 19, 2001 Mr. Colon acknowledged that he told appellant that the medical unit was not open and that appellant could see his own physician. Mr. Colon stated that appellant claimed that he was too ill to wait to see his own physician and requested permission to go to the nearest hospital. In response to appellant's request, Mr. Colon stated that due to the traffic in Manhattan, he believed that walking would be the fastest way to arrive at the hospital.

Mr. Carlo stated that, after appellant complained about being sick, Mr. Colon immediately escorted appellant to the hospital.

The evidence of which does not establish that appellant was subjected to harassment. Appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisor as alleged. He has not established a compensable employment factor under the Act.<sup>6</sup>

Appellant's allegations involving Mr. Colon's request for medical documentation,<sup>7</sup> improper withholding of pay by the employing establishment when he was pulled off the work floor and left work early due to his back condition, being questioned about his start time and his request for soap constitute administrative or personnel matters. Such matters, while generally related to the employment, are administrative functions of the employer, not duties of the employee.<sup>8</sup> As such, they do not fall within coverage of the Act, unless the evidence discloses

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<sup>6</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>7</sup> *Thomas D. McEuen*, 41 ECAB 389 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>8</sup> *Janet I. Jones*, 47 ECAB 345 (1996).

error or abuse on the part of the employing establishment.<sup>9</sup> In this case, appellant has failed to provide any evidence of error or abuse on the part of the employing establishment in carrying out these administrative functions.

As appellant has not substantiated a compensable work factor, he has failed to meet his burden of proof establishing that he sustained an emotional condition in the performance of duty. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>10</sup>

The March 20, 2002 and August 17, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
November 13, 2002

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>10</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).