

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN S. SIEGELSKI and U.S. POSTAL SERVICE,
POST OFFICE, Edison, NJ

*Docket No. 02-746; Submitted on the Record;
Issued September 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, 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 November 27, 1999 appellant, then a 36-year-old letter carrier, 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 supervisors. Appellant stopped work on November 29, 1999 and returned on December 6, 1999.¹

Appellant submitted a duty status report dated November 29, 1999 and an attending physicians report prepared, by Dr. Alison Carter, a Board-certified internist, dated December 9, 1999. The duty status report noted that appellant could return to work on December 6, 1999, to a limited-duty position subject to various restrictions. The attending physicians report prepared by Dr. Carter indicated that appellant sustained a panic attack. He noted that appellant could return to regular duty on December 6, 1999.

The employing establishment submitted a statement from appellant's supervisor dated November 27, 1999 and a statement of contravention dated December 16, 1999. The statement from appellant's supervisor, Fulin Ritt dated November 27, 1999, indicated that on that date he requested a meeting with appellant regarding his street time. Appellant requested that a union steward accompany him to the meeting and one was provided to him. Mr. Ritt indicated that the meeting was held to address appellant's repetitive inability to meet his established street time. He indicated that the meeting was informative and instructional in nature. Mr. Ritt noted that appellant was informed that he would be required to maintain his schedule and in particular be required to adhere to his established street time. He noted that the meeting ended on a positive

¹ The record reflects that appellant filed a previous claim for emotional condition, claim No. 02-0767035 for an injury sustained December 28, 1999. The record indicates that this claim was denied by the Office of Workers' Compensation Programs on March 13, 2000.

note. The statement of contravention dated December 16, 1999, indicated that the purpose of the November 27, 1999 meeting with appellant's supervisor was to remind appellant that he was required to adhere to his established street time which was purely an administrative matter. The employing establishment noted that appellant's claim was without merit because appellant's reaction was self-generated.

In a letter dated December 30, 1999, the Office requested detailed factual and medical evidence from appellant and from Dr. Carter, indicating that the information submitted was insufficient to establish that appellant sustained an employment-related injury on the above date.

Dr. Carter submitted a report dated January 6, 2000, indicating that appellant was treated for a panic attack on November 27, 1999. He noted that the attack occurred after his supervisor informed appellant that he was not working fast enough. Dr. Carter indicated that appellant also suffered a panic attack one year ago, which was also related to stress at work.

Appellant submitted a report from Dr. Ashok Patel, a Board-certified psychiatrist, dated March 3, 2000. Dr. Patel indicated that he was treating appellant for a stress-related disorder and that he was able to return to work on March 3, 2000. Dr. Patel noted that appellant was at 100 percent and was able to complete his job duties on a daily basis.

Thereafter, appellant submitted a statement which raised the following allegations: (1) appellant's supervisor harassed him on several occasions regarding his street delivery time; (2) appellant's supervisor monitored his route; (3) appellant's supervisor admonished him about his work habits; (4) appellant's supervisor threatened to give him a letter of warning if his street delivery time did not improve; (5) appellant's supervisor wrongfully called him into his Office to discuss his delivery time; (6) appellant was denied union representation at a November 27, 1999 meeting; and (7) appellant's supervisor wrongfully called appellant into his office to discuss his alleged irregular attendance on December 6, 1999.

The employing establishment submitted a statement from appellant's supervisor dated July 21, 2000 controverting appellant's allegations.

In a decision dated August 15, 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 July 10, 2001, appellant requested reconsideration of his claim. Appellant submitted the treatment notes of Dr. Patel, which reveal appellant's treatment for stress during the year of 2000. Appellant also submitted an inspector general audit report dated May 11, 2001. This audit report revealed that the Toms River Post Office provided a confrontational, hostile and potentially violent work environment. The report indicated that this situation occurred because the postmaster and supervisors possessed poor human relations skills and demonstrated abusive management styles. The report does not reference appellant or his allegations against the employing establishment, which allegedly resulted in his emotional condition.

By decision dated September 20, 2001, the Office affirmed its decision dated August 15, 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.² 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.³

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.⁴ 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.⁵

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.⁶ 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.⁷

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated August 15, 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.

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

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

⁷ *Id.*

Appellant alleged harassment on the part of his supervisor. 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.⁸ 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.⁹ In the present case, appellant's supervisor indicated that he did not harass appellant regarding his street time but indicated that it was his responsibility to address carriers about their street times. The supervisor noted that appellant had been doing his route since 1996 and had 645 stops with a street time of 6 hours and 11 minutes. He indicated that appellant's route was adjusted by removing 191 stops, however, appellant continued to use nearly 6 hours on the road. The supervisor noted that this matter was addressed professionally and indicated that his meeting with appellant was to inform him of his deficiencies and to discuss ways to improve his performance. He noted that the meeting was conducted in a professional manner and was not loud or punitive. The supervisor indicated that after the meeting appellant called from the road indicating that he was experiencing shortness of breath. Thereafter, appellant was taken to the emergency room. He noted that he requested that appellant fill out paperwork to document his condition. Appellant also alleged his supervisor threatened him by indicating that he would issue a letter of warning if appellant did not improve his street delivery time.¹⁰ However, appellant's supervisor indicated that upon appellant's return to work he discussed appellant's irregular attendance with him. He informed appellant that his attendance must improve or corrective action would be taken. The supervisor indicated that he merely addressed appellant's work deficiencies, performance and attendance and the consequences if appellant failed to improve his performance, which was within his role as supervisor. General allegations of harassment are not sufficient¹¹ and appellant has not submitted sufficient evidence to establish that he was harassed by his supervisor.¹² Appellant alleged that his supervisor made statements and engaged in actions which he believed constituted harassment, but he provided no corroborating evidence, or witness statements to establish that the statements actually were made or that the actions actually occurred.¹³ The Board notes that vague allegations of a supervisor threatening 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

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

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ See *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001) (while the Board has recognized the compensability of threats in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability). In this case, appellant did not submit evidence or witness statements in support of his allegation and his supervisor denied that he threatened appellant.

¹¹ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹² 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).

¹³ See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant's other allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹⁵ 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) appellant's supervisor monitored appellant's route;¹⁶ (2) appellant's supervisor admonished him about his work habits;¹⁷ (3) appellant's supervisor wrongfully called appellant into his Office to discuss his delivery time;¹⁸ (4) and appellant's supervisor wrongfully called appellant into his office to discuss appellant's alleged irregular attendance.¹⁹ Appellant also alleged that he was denied union representation at a November 27, 1999 meeting. However, the record does not substantiate this allegation, as appellant indicated in his statement date stamped July 7, 2000, that a union steward was present at the November 27, 1999 meeting. Appellant also submitted a report of the Inspector General audit of the Toms River Post Office, which revealed that the employing establishment provided a confrontational, hostile and potentially violent work environment. However, this report does not reference appellant or his allegations against the employing establishment which allegedly resulted in his emotional condition. Therefore, it is not probative on the issue of causal relationship of appellant's emotional condition and the factors of

¹⁴ See *Marguerite J. Toland*, 52 ECAB ____ (Docket No. 99-1989, issued March 9, 2001) (An employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse).

¹⁵ See *Thomas D. McEuen*, *supra* note 3.

¹⁶ See *Dennis J. Balogh*, 52 ECAB ____ (Docket No. 99-1512, issued January 25, 2001); see also *John Polito*, 50 ECAB 347 (1999) (Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. Appellant did not submit evidence supporting his claims that the employing establishment committed error or abuse in monitoring work activities such that he did not establish a compensable employment factor).

¹⁷ See *Marguerite J. Toland*, *supra* note 14.

¹⁸ *Id.*

¹⁹ See *Judy Kahn*, 53 ECAB __ (Docket No. 00-457, issued February 1, 2002) (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).

employment alleged to have caused such a condition. 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.²⁰ Although appellant has made allegations that the employing establishment erred and acted abusively, he has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions were unreasonable. He provided no corroborating evidence, such as witness statements, to establish that his supervisors actions were unreasonable.²¹ Thus, appellant has not established a compensable employment factor under the Act in this respect.²² The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Appellant has presented no corroborating evidence to support 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.

The September 20, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

²⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²¹ See *Larry J. Thomas*, 44 ECAB 291, 300 (1992).

²² See *John Polito*, *supra* note 16.