

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. McKINNON and U.S. POSTAL SERVICE,
POST OFFICE, Upland, CA

*Docket No. 02-1470; Submitted on the Record;
Issued August 15, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On July 19, 2000 appellant, then a 40-year-old mail carrier, filed a traumatic injury claim¹ alleging that on that date his new supervisor, Sonia Telles, asked him in an intimidating tone how much overtime he would need to complete his route and told him that "the mail is backed up and that she has this new guy on her back and what was I going to do for her." He told Ms. Telles that he needed 1 hour and 45 minutes² but she would only grant 1 hour of overtime and told him to call in later if he found that he needed more time.³ Appellant began to feel stressed and experience back pain. She told appellant to meet her in the lounge but he was too intimidated to ask the location of the lounge.⁴ Appellant decided to try to deliver his route but, the new postmaster⁵ asked Ms. Telles to accompany him and he interpreted this as harassment.⁶ He began to load his vehicle but felt dizzy and was taken to the emergency room.

¹ The Office of Workers' Compensation Programs developed the claim as an occupational disease claim as the alleged incidents covered more than one day.

² A carrier is required to submit Form 3996 asking for assistance or overtime if he believes he will be unable to complete his route within eight hours. The supervisor can provide assistance from other carriers, approve overtime, or reduce the amount of mail to be delivered by the carrier on that day.

³ At the hearing, held in this case, appellant testified that Ms. Telles wrote two different amounts of overtime on his request form, 60 minutes and, below that, 75 minutes. Of record is a postal Form 3996 showing an overtime estimate of 75 minutes and approval of 75 minutes. Appellant stated that he was never asked to call in during his route delivery prior to July 19, 2000.

⁴ The room that Ms. Telles called the "lounge" was known to appellant as the "breakroom."

⁵ Bruce VanZandt.

⁶ Appellant alleged that a carrier was entitled to 24 hours' notice before a route inspection was performed.

Appellant alleged that Ms. Telles harassed him, on other occasions, by giving frequent instructions on how he should perform his tasks, telling him to wait for instructions before proceeding from a completed task to another task, giving confusing instructions, giving him less time to complete his route than he needed and being rude when she spoke to him. He alleged that Ms. Telles retaliated against him because he had reported to her that he found a bucket of undelivered mail, left by another employee, and she appeared to want to hide the undelivered mail from management because employees were sometimes suspended for leaving outgoing mail behind.⁷

In response to appellant's allegations, Ms. Telles stated that appellant requested 1 hour and 30 minutes of overtime on July 19, 2000 and was granted 1 hour and 15 minutes but was told to call in if he ran into problems. Appellant submitted a form requesting a special route inspection but, Ms. Telles asked him to submit it at a later time because she wanted him to begin delivering his route that day. He and a union official advised Ms. Telles that she had written 60 minutes of overtime on the form given to appellant and she apologized and corrected the approved time to 75 minutes. Peter Tesoro, a union steward, suggested that Ms. Telles follow appellant on his route if she questioned the overtime needed and she and the postmaster agreed to this suggestion. Appellant told her that he was leaving due to illness but changed his mind and walked to his vehicle to begin his route. Ms. Telles followed him but he was angry and said he was going home. Appellant went back inside and complained of feeling ill.

In a statement dated July 27, 2000, coworker Paula Miller stated that, on July 19, 2000, appellant approached her and indicated that he was confused about his instructions from Ms. Telles regarding the overtime needed to complete his route. She advised him to clarify the matter with Ms. Telles. Ms. Miller noted that Ms. Telles had apparently approved 75 minutes of overtime for appellant but wrote 60 minutes on the approval form. She advised Mr. VanZandt of the problem but, he indicated that the matter was to be resolved by having Ms. Telles accompany appellant on his route. Appellant and Ms. Telles went to the parking lot but appellant later returned and indicated that he was going home due to stress. He complained of dizziness and numbness in his arms and was taken to the emergency room. Seven other employees submitted similar statements.

Postmaster VanZandt explained, in statements dated August 30 and September 7, 2000, the process by which supervisors and mail carriers determined or adjusted the appropriate amount of time to be allotted for route delivery. He stated that appellant had worked at the employing establishment since 1982 and was aware of the process but chose not to participate fully in the process on July 19, 2000 and, along with union representatives, began arguing about his route. Mr. VanZandt stated that appellant's overtime request that day was not reasonable based on the volume of mail to be delivered. He stated that regulations provided for a supervisor to determine appropriate delivery standards and, as the issue on July 19, 2000 was the amount of time needed to deliver appellant's route that day based on his volume of mail, Ms. Telles needed to accompany him on his route.⁸ The union steward agreed with this solution to the problem.

⁷ Appellant stated that she asked him where she could put the bucket of mail if she did not want anyone to see it. He reported the incident to the union.

⁸ Mr. VanZandt also noted that supervisors had the right to monitor employees on their delivery routes.

Mr. VanZandt noted that a four-day inspection of appellant's route was performed during the week of August 12, 2000 by another carrier and it was determined that 7 hours and 48 minutes was needed to complete the route. He stated that the amount of overtime granted by Ms. Telles on July 19, 2000, 1 hour and 15 minutes, was appropriate.

Several employees submitting statements indicating that Ms. Telles did not unreasonably monitor their work. Two of the employees stated that appellant seemed upset by the supervision of Ms. Telles and one employee stated that appellant appeared to be given special instructions.

By decision dated May 1, 2001, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an emotional condition causally related to any compensable employment factors.

By letter dated May 30, 2001, appellant requested a hearing that was held on October 25, 2001. By decision dated February 7, 2002 and finalized February 11, 2002, the Office hearing representative affirmed the Office's May 1, 2001 decision.

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty causally related to factors of his employment.

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.⁹ 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁰

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.¹¹ 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.¹²

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

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

¹² *Effie O. Morris*, 44 ECAB 470 (1993).

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.¹³ 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.¹⁴

In this case, appellant attributed his emotional condition to a number of alleged employment incidents and conditions. The Board must, thus, initially determine whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that on July 19, 2000 Ms. Telles asked him in an intimidating tone how much overtime he would need to complete his route and he told her that he needed 1 hour and 45 minutes. She granted one hour of overtime¹⁵ and told him to call in later if he needed more time. Her instructions were not clear to appellant and he began to feel stressed. The postmaster asked Ms. Telles to accompany him and he interpreted this as harassment. Appellant began to load his vehicle but began to feel dizzy and was taken to the emergency room.

As a general rule, 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.¹⁶ However, the Board has also held 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.¹⁷ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁸

In this case, there is insufficient evidence of error or abuse in Ms. Telles' handling of the incident on July 19, 2000. After some initial confusion about the amount of overtime granted, Ms. Telles approved 1 hour and 15 minutes for appellant that day. She told appellant to call in from his route if he discovered that he needed more overtime. However, Mr. VanZandt asked Ms. Telles to accompany appellant to resolve their disagreement as to the amount of time needed to deliver the route that day. There is no grievance decision or other finding that the employing establishment erred in the amount of overtime granted to appellant by Ms. Telles on July 19, 2000. The witness statements do not establish error or abuse by the employing

¹³ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹⁴ *Id.*

¹⁵ As noted previously, Ms. Telles later corrected the approved overtime to 75 minutes.

¹⁶ *Dinna M. Ramirez*, 48 ECAB 308 (1997); *Michael L. Malone*, 46 ECAB 957 (1995).

¹⁷ *Id.*

¹⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

establishment in the handling of this administrative matter on July 19, 2000. Mr. VanZandt stated that appellant's overtime request that day was not reasonable based on the volume of mail to be delivered and the amount of overtime approved by Ms. Telles was appropriate. He stated that the regulations provided for a supervisor to determine appropriate delivery standards and, as the issue on July 19, 2000 was the amount of time needed to deliver appellant's route that day based on his volume of mail, Ms. Telles needed to accompany him on his route. The union steward agreed with this solution to the problem. Appellant alleged that employing establishment regulations required 24 hours' notice before a route inspection was performed. However, it appears that Ms. Telles was not performing a regular route inspection on July 19, 2000¹⁹ but was only following the instructions of the postmaster to resolve the difference of opinion regarding the route time needed to deliver the volume of mail for that day. Considering all the evidence and circumstances, appellant submitted insufficient evidence of error or abuse regarding the administrative incident on July 19, 2000. Therefore, the Board finds that appellant's emotional reaction to the incident on July 19, 2000 was self-generated and not a compensable factor of employment.

Appellant also alleged that he was often harassed by Ms. Telles giving frequent instructions on how he should perform his tasks, telling him to wait for instructions before proceeding from a completed task to another task, giving confusing instructions, giving him less time to complete his route than he needed and being rude when she spoke to him. The Board has held that actions of an employee's supervisor which the employee characterized as harassment may constitute factors of employment giving rise to coverage under the Act. However, for harassment to give rise to a compensable disability there must be evidence that harassment and discrimination did in fact occur. Mere perceptions of harassment and discrimination are not compensable under the Act.²⁰ It appears from the record that Ms. Telles did monitor appellant's work and use of overtime but there is insufficient evidence that her performance of this administrative function rose to the level of harassment. The fact that Ms. Telles may have more closely monitored appellant than some other employees does not establish that her actions were improper. Mere disagreement or dislike of a supervisory or management action is not compensable absent evidence of error or abuse.²¹ Regarding the allegations that Ms. Telles gave confusing instructions, spoke to appellant in a rude tone and gave him less time to complete his route than he needed, appellant has submitted insufficient evidence to establish these allegations as factual and they therefore, cannot be deemed compensable employment factors. Considering all the evidence and circumstances, appellant submitted insufficient evidence to establish his allegations of harassment by Ms. Telles and, therefore, they are not deemed compensable factors of employment.

¹⁹ As noted above, Ms. Telles asked appellant to delay his request for a special route inspection until another day.

²⁰ *Donna J. DiBernardo*, 47 ECAB 700 (1996); *Eileen P. Corigliano*, 45 ECAB 581 (1994).

²¹ *Marguerite J. Toland*, 52 ECAB 294 (2001).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition while in the performance of duty.²²

The decision of the Office of Workers' Compensation Programs dated February 11, 2002 is affirmed.

Dated, Washington, DC
August 15, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

²² Because appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299 (1996).