

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DERRICK A. LEE and U.S. POSTAL SERVICE,
GREENSBORO BULK MAIL CENTER, Greensboro, NC

*Docket No. 03-881; Submitted on the Record;
Issued August 11, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On April 29, 2002 appellant, then a 32-year-old distribution clerk, filed an occupational disease claim alleging that on August 29, 1999 he became aware that he had developed an emotional condition which he described as job stress and anxiety, and related it to his employment. Appellant did not stop work, but sought help from several agencies to deal with the stress; the employing establishment controverted appellant's claim.

Appellant had been working limited duty since August 29, 1999 due to an on-the-job right shoulder injury on July 17, 1999.¹ However, on August 30, 2001 he was advised by the employing establishment that his tour and days off were being changed beginning September 8, 2001.² Appellant disagreed with this action.

In support of his claim, appellant submitted two medical notes from Dr. Rupinder D. Kaur, a Board-certified psychiatrist, who noted on April 19, 2002: "[Appellant] is under my care. I need him to be off of work [for] seven days to make sure his medicine does not cause drowsiness." The second note dated April 29, 2002 revealed: "[Appellant] is under my care. He is not [a] danger to self or others. He can return to work on April 30, 2002."

Appellant also submitted a May 2, 2002 Form CA-17 report incompletely filled out by Dr. Kaur who noted clinical findings as "severe anxiety [and] insomnia," indicated that the diagnosis due to injury was "anxiety," and indicated that he could return to work on

¹ Appellant claimed that he was hit with a door by Manager of Distribution Operations (MDO) Paul Stokes in 1999.

² The employing establishment responded that appellant had requested and was given weekends off from August 20 to November 22, 2001.

April 30, 2002. Dr. Kaur did indicate that appellant's interpersonal relations were affected because of a neuropsychiatric condition and noted that he found it "difficult to cope."

In a May 10, 2002 statement, the employing establishment noted that appellant claimed that Mr. Stokes was threatening employees, which was investigated by the employing establishment and found to be unsupported. It also noted that appellant chose to pursue civil and criminal actions against Mr. Stokes regarding the door incident, and that Mr. Stokes was vindicated of all charges and the cases were dismissed by the North Carolina judicial system around November 22, 1999.³ The employing establishment noted that, due to a drop in mail volume, management decided to reduce the workforce on the Tour I, and that appellant was one of 12 clerks "excessed" from Tour I. He was given a preference sheet which he returned with "No" written on it instead of his selection of a job assignment. He was then given the letter about his tour change and days off change, with which he disagreed. An investigation into appellant's harassment claims revealed that appellant was observed by and spoken to by MDO Phil Burns concerning appellant's excessive talking and not being gainfully, productively employed. No harassment was found.

On May 20, 2002 the union noted that appellant was being threatened with being charged with being absent without leave (AWOL) by his supervisor, J. Neal. On this letter appellant wrote that Ms. Neal was harassing him even after she changed jobs.

By letters dated May 21, 2002, the Office of Workers' Compensation Programs requested further specific information from both appellant and the employing establishment, including a statement of the specific factors appellant implicated in the development of his condition.

In an undated response, appellant provided comments about occurrences at work, such as a nonsupervisor being placed in her boyfriend's section, that on February 28, 2002 appellant put in for a change in his schedule but that nothing was done on his behalf, that on March 1, 2002 he provided a physical therapy slip and asked for a change in schedule which was denied, and that on March 3, 2002 there were no lights and he had to work alone in the dark. Appellant claimed that he should have been allowed to work in the break area where it was safe. He also alleged that on March 4, 2002 he asked to review his floor file, that he was initially denied review, then told that he could review his file in his lap, and that he went to the shop steward and then was put in the middle of the floor in front of everybody. Appellant felt that this situation was humiliating and degrading and several people allegedly laughed at him. Appellant claimed that he had to wait and use annual leave to get his schedule changed because no one told him that the person who needed to do it was not there that day. Appellant claimed that on February 24 and March 14, 2002 Mr. Burns came over to harass him and give him harsh staring looks, that on March 15, 2002 Mr. Stokes came over to talk to Sheila Soto when he was not supposed to be in the area talking to anybody, and that Mr. Burns hit his hand on a desk and on several occasions thereafter came over to gawk or to check on him. Appellant also claimed that he had trouble with his limited-duty paperwork.

³ Appellant has not alleged that the 1999 door incident caused his emotional condition.

In another undated statement, appellant claimed that he was purposely injured on July 17, 1999 by a manager at work.⁴ He claimed that he was continuously harassed and had to change medications to cope with the pain and job stress, and that management did not aid him in his claim against Mr. Stokes. Appellant claimed that on October 5, 1999 the stress and pain almost doubled when he found out that he had a bone protruding from his shoulder that was hitting nerves and causing a great deal of pain. Appellant claimed that the nerve pain as well as the work pressures to get better, caused a great deal of stress. Appellant claimed that on November 22, 1999 he missed his daughter's birthday to be in court, and that the employing establishment's lies and false statements stressed him out. As a result appellant claimed that he lost sleep and began having migraines. Appellant claimed that on November 27, 1999 Mr. Stokes returned to his tour and he felt as if he would vomit with migraines. Appellant claimed that he was able to cope with his anxiety and stress until he was "up ended" on August 24, 2001 by Wayne Cline, Mr. Burns and Ed Clark. He claimed that he filed an Equal Employment Opportunity (EEO) claim for the time period August 24 to October 30, 2001, and claimed that these individuals harassed him about being on limited duty. Appellant claimed that he was on modified duty but they disagreed and told him that he was not on limited duty anymore but was on light duty for a nonoccupational injury. Appellant claimed that he had to file another EEO complaint about being denied family medical leave, which caused him more stress.

In an undated response to the Office's May 21, 2002 request, appellant claimed that harassment from his employer led to his stress and that a manager hit him with a door.

By report dated June 4, 2002, Dr. Kaur presented the results of an April 19, 2002 evaluation noting that appellant was injured at work in 1999 when a manager hit him with a door on his shoulder and that it also injured his neck. Dr. Kaur noted that appellant had increasing pain in his neck area and went to physical therapy, that his blood pressure was elevated and that he was experiencing "[i]nsomnia, very nervous, isolating self from others, unable to stay calm, forgetful, feels depressed, unmotivated, decreased energy, decreased motivation, feels hopeless [and] helpless." He noted appellant's mental status, which was normal except for a depressed mood, and diagnosed "Adjustment [disorder with] anxious mood, [rule out] major depressive [disorder]."

In another form report dated June 4, 2002, Dr. Kaur indicated that appellant had "depressed mood, insomnia, severe anxiety, tired, unmotivated, somewhat hopeless, helpless and [complained of] difficulty coping." Dr. Kaur indicated that appellant's condition commenced April 19, 2002, that appellant would need to work less than a full schedule for 4 to 12 weeks, that his condition was chronic and he would be treated every 3 to 4 weeks and given antidepressant and antianxiety medication, and that he would be unable to work intermittently secondary [to] stress at work, such that he "needed to stay out of work to recover from severe anxiety [and] insomnia."

In a June 21, 2002 Form CA-17 report, Dr. Kaur indicated by checking "yes" that appellant had job-related stress, noted that he was then less depressed and less anxious but still

⁴ This referred to Mr. Stokes and the door incident which occurred almost three years before appellant filed his claim.

nervous, and noted that interpersonal relations were affected as appellant's "supervisor is too intense."

In a June 21, 2002 response, the employing establishment noted that appellant was difficult to deal with and that he refused to provide most needed information to management. It noted that, from August 29, 1999 to the present, as far as conflicts with supervisors, appellant was not cooperative with management and seemed to challenge any authority. The employing establishment noted that appellant's whole conflict with management seemed to be centered on his misunderstanding of a permanent rehabilitation position. The employing establishment noted that it had not offered appellant a permanent rehabilitation position, but that he was on a limited-duty offer. It noted that appellant felt that he had permanent off days of Sunday and Monday, but that he was "excessed" to Tour II from Tour I due to elimination of the tour with off days of Tuesday and Wednesday. The employing establishment noted that appellant sustained his shoulder injury on August 17, 1999⁵ after being hit by a door. The employing establishment noted that, although appellant alleges that it did not support him in this incident, the postal inspectors conducted a full investigation and it was determined that Mr. Stokes was not a threat and that the door incident was not deliberate. The employing establishment noted that appellant had been on limited duty since August 29, 1999 with light lifting and carrying under 15 pounds, that he usually sat eight hours per day but could be required to stand for one hour intermittently, and that he was generally able to perform his required duties; however, not to expectations. It noted that appellant talked excessively and stopped work to talk to others in his work area, and that Mr. Burns talked with appellant regarding excessive talking and being unproductive.

On a July 19, 2002 Form CA-17 report Dr. Kaur noted that appellant's injury was due to "stress at work," that findings included inability to cope and anxiousness, and that his diagnosis due to injury was "adj[ustment] d[isorder] [with] anxious mood." Dr. Kaur indicated that appellant's interpersonal relations were affected because appellant was "unable to cope," and that he could return to work on July 25, 2002.

Medical evidence regarding appellant's right shoulder condition and neck was also submitted.

On September 12, 2002 the Office requested further information about appellant's allegations concerning viewing his floor file. In a response dated October 10, 2002, Sheila Soto, the acting supervisor, provided a statement in which she described the events surrounding appellant's review of his floor file. Ms. Soto noted that she advised appellant that he could review his file at the stand-up desk, as a supervisor had to be present when he reviewed his floor file, and as she had a lot of work to do at the desk. Appellant wanted to review his file at his table, which was denied, and he requested a shop steward. The shop steward spotted a long table and suggested that the table be brought to the loop area across from the stand-up desk so appellant could spread out the papers under Ms. Soto's supervision. Ms. Soto noted that as appellant reviewed his floor file an employee from maintenance came by the table, that they said a few words, laughed, and then continued on. She explained that she was there the whole time

⁵ The record supports that this injury actually happened on July 17, 1999.

appellant was reviewing his file and that there were no employees standing around the area, pointing and laughing as appellant had alleged.

Ms. Soto also provided another October 10, 2002 statement about the incident where the regular lights went out and work had to continue with the emergency lighting. She had to instruct employees where to go to work and she denied yelling at appellant about where to go. Ms. Soto noted that appellant was sent to another area, and that the supervisor there sent him back as there were too many employees there. She noted that the area in which appellant works, there were emergency lights overhead, and therefore he was never working in the dark. Ms. Soto noted that there were several other employees working in that area and the shop steward agreed that it was not a hazard. She also noted that no one stared at appellant and that she did not say anything out of the way to appellant.

By decision dated December 11, 2002, the Office rejected appellant's emotional condition claim finding that none of the events or incidents implicated by appellant were compensable factors of employment. The Office found the factors implicated by appellant in the causation of his condition were either not established as factually happening or deemed not to have arisen out of or in the course of his employment.

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

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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.⁷ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁸

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁹ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.¹⁰ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."¹¹

When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹² When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹³ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.¹⁴

In the present case, appellant alleged that he developed stress and anxiety because the employing establishment changed his schedule, including his days off. However, the employing

⁸ *Id.*

⁹ *Donna Faye Cardwell, supra note 7, see also Lillian Cutler, 28 ECAB 125 (1976).*

¹⁰ *Id.*

¹¹ *See Joseph DeDonato, 39 ECAB 1260 (1988); Ralph O. Webster, 38 ECAB 521 (1987).*

¹² *Ruthie M. Evans, 41 ECAB 416 (1990).*

¹³ *See Gregory J. Meisenberg, 44 ECAB 527 (1993).*

¹⁴ *See supra note 7 and 9.*

establishment noted that appellant's conflict with management was due to his misunderstanding about a permanent rehabilitation position, which he did not have, and limited duty, which he had been offered. The employing establishment noted that appellant had been moved from one tour to another due to a drop in mail volume, such that the workforce had to be reduced, which resulted in him becoming excess personnel. The Board has held that a change in work shift may constitute a compensable factor of employment in situations where a claimant actually undergoes a change in work shift which causes a medical condition.¹⁵ Insofar as appellant alleged that the change in his tour caused stress and anxiety, this is a compensable factor of employment, and therefore the medical evidence must be evaluated. However, none of the medical evidence submitted addressed causation of appellant's emotional condition as specifically related to his change in tour. Therefore, although compensable, the evidence of record does not support that the change in appellant's tour caused or contributed to his emotional condition.

Appellant alleged that he was threatened by Mr. Stokes and hit with a door by him. Regarding Mr. Stokes, threats and the door, the Board notes that the employing establishment found the threat allegations were unsupported and that Mr. Stokes was vindicated of all door-strike charges in the criminal and civil actions appellant pursued against him, on November 22, 1999. Further, appellant provided no specifics regarding the alleged threats, and no corroboration that the threats occurred as alleged was forthcoming. Therefore, such allegations are not established as occurring and are consequently not compensable under the Act.

Appellant also claimed that he was harassed by Mr. Cline, Mr. Burns, Mr. Clark, Ms. Neal and Ms. Soto. However, no specific incidents of harassment were identified, no witnesses were noted, and no corroboration of any sort was presented by appellant to substantiate that incidents of harassment from these supervisors occurred as alleged.¹⁶ The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹⁷ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹⁸ The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of his harassment allegations. Appellant has the burden of establishing a factual basis for his allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them, and no harassment by these supervisors has been demonstrated.

¹⁵ *Virginia Dorsett*, 50 ECAB 479 (1999).

¹⁶ An investigation into appellant's harassment claims found that Mr. Burns evidently spoke to appellant about his behavior and productivity. Although this was a specific finding, it was found to involve no element of harassment, as it was a disciplinary discussion without evidence of error or abuse.

¹⁷ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Appellant alleged that he was threatened with being found AWOL by Ms. Neal. The Board has held that disciplinary matters consisting of oral reprimands, counseling sessions, discussions or letters of warning for conduct, including being found AWOL and treated accordingly, are administrative or personnel matters and are generally not covered under the Act unless there is evidence of administrative error or abuse.¹⁹ Appellant has presented no evidence that being found AWOL was incorrect, improper or abusive. Therefore, he has not established that Ms. Neal's actions regarding the AWOL were erroneous or abusive.

Appellant alleged that a nonsupervisor was placed in her boyfriend's section. This is an administrative action not involving appellant, without error or abuse demonstrated, such that it is not a compensable factor of employment.²⁰

Appellant claimed that he put in for a change in his schedule and nothing was done on his behalf, and that a change in schedule for physical therapy was denied. The Board has held that although the handling of leave requests, attendance matters, and schedule changes are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.²¹ An employee's emotional reaction to the employing establishment's action on a request for official time to engage in personal activities is generally not compensable because it arises out of an administrative or personnel matter and, absent evidence of error or abuse, is not considered to be sustained in the performance of duty.²² As no evidence of error or abuse was presented regarding the denial of schedule changes, such actions are not compensable factors of appellant's employment.

Appellant alleged that he had to work alone in the dark, which was stressful because he felt it was unsafe. However, this allegation was controverted by the employing establishment and appellant's supervisor noted that he was working with others under emergency lighting and that the shop steward agreed that it was not a hazard. As this claim is not substantiated by any other evidence, and as the supervisor indicated that it was factually untrue, it has not been established as having occurred as alleged and is not a compensable factor of employment.

Appellant alleged that he was initially denied review of his floor file and then put in the middle of the floor in front of everybody and laughed at, which was humiliating and degrading, but Ms. Soto explained administratively what happened when he requested his floor file review. As a supervisor had to oversee an employee reviewing his floor file, appellant had to be in the sight of Ms. Soto, and as Ms. Soto had a great deal of work to do, the easiest place for him to review his floor file was in front of the stand-up desk. Ms. Soto indicated that it was the shop steward who suggested using a long table and moving it to the loop area in front of the stand-up desk, such that it was not a supervisory action, and that as appellant was reviewing his file, only one maintenance person came by, stopped, they talked and then mutually laughed, then he left,

¹⁹ See *Janet I. Jones*, 47 ECAB 345 (1996); *Gregory N. Waite*, 46 ECAB 662 (1995); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

²⁰ See *supra* note 9.

²¹ See generally *Dinna M. Ramirez*, 48 ECAB 308 (1997); *Lillie M. Hood*, 48 ECAB 157 (1996).

²² *Id.*

such that appellant's allegations of being laughed at and humiliated in front of everyone were unfounded. As this allegation is not supported factually as occurring as alleged, it is not compensable as administrative error or abuse.

Appellant also claimed that he had to use annual leave to get his schedule changed because no one told him the person he needed was there, which caused him stress. The Board has held that leave matters, like schedule changes, are administrative functions of the employer and not the duties of the employee and, absent evidence of employing establishment error or abuse in discharging administrative or personnel responsibilities, such matters are not considered compensable under the Act.²³ In this case, it was appellant's choice to use his annual leave, and the employing establishment did not require him to do so. Further, it has not been shown that it was the employing establishment's duty to advise appellant about whether other personnel were there or not. Therefore, this allegation is not a compensable factor of appellant's employment.

Appellant further claimed that Mr. Burns gave him harsh staring looks and gawked at him. However, he submitted no corroborating evidence to substantiate that these events occurred as alleged, and even if they did, there is no evidence that they rise to the level of harassment or abuse, as monitoring employee work is a legitimate supervisory function.²⁴

Appellant additionally claimed that management did not aid him with his civil and criminal suit against Mr. Stokes, and that he missed his daughter's birthday to be in court on November 22, 1999. The employing establishment management has no duty to help an employee sue another employee in civil or criminal court. Further, as appellant's claims were dismissed and Mr. Stokes was vindicated, it appears that there was no merit in them. Filing lawsuits in court and missing birthdays are matters outside the scope of appellant's federal employment, such that any stress resulting from them would not be compensable under the Act.

Appellant further claimed that nerve pain due to a bone in his shoulder caused a great deal of stress. The Board has held that where a claimant attributes his emotional condition to a previously accepted employment injury, the question is strictly medical as to whether the previous injury contributed to the diagnosed psychiatric condition, and, if so, how?²⁵ Although appellant was on light duty due to a July 17, 1999 on-the-job injury, the record does not contain sufficient evidence or medical records pertaining to that employment injury such that its nature can be ascertained with any clarity, let alone any causal relationship. If appellant's July 17, 1999 injury was accepted as being compensable under the Act, and if he is experiencing stress due to consequential shoulder pain, that stress claim could be pursued as a consequential condition to the July 17, 1999 primary injury claim. However, as insufficient medical records pertaining to that injury and his present emotional condition are included in the instant case record, which contains only magnetic resonance imaging results diagnosing right shoulder tendinopathy and subacromial/subdeltoid bursitis and a physical therapy evaluation, such a determination

²³ See *James P. Guinan*, 51 ECAB 604 (2000).

²⁴ See *Sandra Davis*, 50 ECAB 450 (1999); *John Polito*, 50 ECAB 347 (1999).

²⁵ See *Robert P. Bourgeois*, 45 ECAB 745 (1994).

regarding whether appellant experienced stress as a consequence of a previously accepted July 17, 1999 employment injury cannot now be made by the Board.

Finally, appellant claimed that he had to file several EEO claims which caused stress. The Board has held that an appellant's allegation of stress from pursuing EEO actions is not compensable as stress or frustration resulting from failure to obtain desired redress or corrective action from other administrative agencies is not covered under the Act.²⁶

Appellant has failed to implicate any compensable factors of employment²⁷ in all of his allegations except for the change in his tour assignment, which, although possibly compensable, is not supported by the medical evidence of record as being causally related to his emotional condition.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 11, 2002 is hereby affirmed.

Dated, Washington, DC
August 11, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

²⁶ *Eileen P. Corigliano*, 45 ECAB 581 (1994).

²⁷ Some were found to be not factual and others were found to be not compensable.