U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

---

In the Matter of COURTNEY NELSON and U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA

*Docket No. 03-1159; Submitted on the Record; Issued August 27, 2003*

---

## DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty, as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On May 7, 2002 appellant, then a 39-year-old mailhandler, filed a traumatic injury claim, alleging that on April 25, 2002 he sustained an emotional condition when his acting supervisor, Tracy Knauss, addressed a discussion he had with Barry Trexler, the manager of distributions operations (MDO), on April 24, 2002.[1] Appellant stated that Ms. Knauss yelled loudly at him and when he asked to speak to her in private, Ms. Knauss refused. In a note, appellant stated that Ms. Knauss berated him and said he had no respect and did not listen to orders. Appellant went home and then to the hospital. In an attached statement, he explained that Ms. Knauss told him in a very loud voice that he was always late getting the mail out and got louder as the conversation progressed. At one point, she responded to him by stating, "[a]re you threatening me?" which shocked appellant and made him think that he needed to "get away" from her as she might try to kick him out of the building or get him fired.

By letter dated May 10, 2002, an employing establishment representative, Susan D. Logan, stated that appellant's responsibilities included getting mail to the West Dock in a timely manner in order to meet scheduled dispatch times and that failure to have the mail on the dock for scheduled dispatch time resulted in the mail being delayed and not delivered in a timely manner. She stated that on several occasions in the past, Mr. Trexler had spoken to appellant and the union steward about the fact that the mail was not reaching the West Dock in a timely manner. Ms. Logan stated that the situation occurred again on April 24, 2002 when the mail was not at the West Dock when it should have been. She stated that Mr. Trexler paged appellant and a union steward, Floyd Steinmetz, to come to his office, both were made aware of the recurring

---

[1] Appellant previously filed a claim for stress at work in 1996, claim No. 03-217292.

situation and, in an effort to correct the problem, Mr. Trexler allowed appellant to go to lunch 15 minutes later than usual to allow him more time to get the mail to the dock.

Ms. Logan stated that, on April 25, 2002, Ms. Knauss was overseeing the operation of the West Dock and reminded appellant of the prior day's discussion regarding the change in his lunch time. She stated that Ms. Knauss did not shout at appellant or speak to him in front of other employees but reminded appellant in a normal tone of voice. Ms. Logan stated that appellant became angry and raised his voice, accusing Ms. Knauss of harassing him and let her know that he objected to an acting supervisor giving him such a reminder. Ms. Logan stated that appellant left the dock immediately, had his lunch and left the building, alleging that he became stressed from his conversation with Ms. Knauss.

The record contains statements from Darren Ford dated December 12, 1996, from M. P. Tecce dated December 17, 1996, a union representative, Darrell R. Hoffman, dated December 23, 1996, Keith Hall dated December 19, 1996, George Sevan dated December 12, 1996, Alphonse Smith, undated, but describing an incident occurring on November 14, 1996 and one statement with an illegible signature dated January 2, 1996. Some of these letters stated generally that management harassed appellant in general or singled him out or that a supervisor told him that he was not "pulling his" weight.

Appellant submitted a copy of an e-mail note from a coworker, Michele Polak, dated March 27, 2002 regarding "a nasty" conversation she had with Al Seruga on "March 25."

In an undated routing slip, received by the Office on June 12, 2002, Mr. Steinmetz stated that on April 24, 2002 he was paged to go to Mr. Trexler's office and told that appellant had been getting the mail out to the dock late. In an another undated routing slip, also received by the Office on June 12, 2002, Mr. Steinmetz stated that on April 25, 2002 Ms. Knauss approached him on the work floor and told him that she had an argument with appellant on the West Dock. She stated that she had told appellant "to make sure" the mail was delivered to the dock on time.

By letter to the union dated May 17, 2002, appellant stated that he was injured on April 23, 2002 due to stress and was out of work receiving continuation of pay, when coworkers sent him a get-well note card signed by many of them on which someone had written "KKK" which made appellant "very upset." Appellant attached the get-well note to the letter.

By letter dated May 21, 2002, the Office requested additional information from appellant including a narrative report from his treating physician regarding how the reported work incident caused or aggravated the claimed injury.

By decision dated June 28, 2002, the Office denied the claim, finding that appellant did not establish that he sustained an injury in the performance of duty.

By letter dated January 9, 2003, which was postmarked February 3, 2003, appellant requested an oral hearing before an Office hearing representative.

By decision dated March 12, 2003, the Branch of Hearings and Review denied appellant's request for a hearing, finding that his request was untimely. The Branch of Hearings

and Review advised appellant that he could request reconsideration by the Office and submit additional evidence.

The Board finds that appellant did not establish that he sustained an emotional condition in the performance of duty, as alleged.

To establish that appellant sustained an emotional condition causally related to factors of his federal employment, he must submit: (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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.[2] Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.[3]

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.[4] 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.[5]

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.[6] The issue is not whether the claimant has established harassment or discrimination under standards applied the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.[7] To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting that allegations with probative and reliable evidence.[8]

---

[2] *Fred Faber*, 52 ECAB 107 (2000).

[3] *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

[4] 5 U.S.C. §§ 8101-8193.

[5] *Clara T. Norga*, 46 ECAB 473, 480 (1995); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[6] *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[7] *See Martha L. Cook*, 47 ECAB 47 ECAB 226, 231 (1995).

[8] *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[9] 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.[10]

In this case, appellant alleged that, on April 25, 2002, he sustained emotional stress when Ms. Knauss yelled at him in front of other coworkers regarding his getting the mail late to the West Dock. He suggested that Ms. Knauss spoke to him disrespectfully and in an intimidating tone. The employing establishment stated that appellant had a history of getting the mail late to the West Dock. On April 24, 2002 Mr. Trexler had a discussion with appellant and Mr. Steinmetz about the problem and the next day, on April 25, 2002, Ms. Knauss spoke to appellant to remind him to get the mail to the dock on time. The employing establishment stated that appellant became angry and raised his voice, accusing Ms. Knauss of harassing him and objected to her, as an acting supervisor, giving him the reminder. Mr. Steinmetz's noted on a routing slip that Ms. Knauss told him that she had an argument with appellant. However, appellant presented insufficient evidence to establish that Ms. Knauss spoke to him inappropriately. The witness statements dated in January and December 1996 which appellant submitted are not relevant to the allegations of his claim. The March 25, 2002 email note about Mr. Seruga and the get-well note appellant received with the letters "KKK" on it are not relevant to what happened between and appellant and Ms. Knauss on April 25, 2002. Appellant's claim is for a traumatic injury occurring on April 25, 2002 and the incident with Mr. Seruga occurred prior to April 25, 2002 and the other incident involving receipt of the get-well note with "KKK" on it, occurred after April 25, 2002.

A supervisor's reminding a claimant to do his work properly involves the administration of personnel matters and will be considered a compensable factor of employment to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively.[11] The Board has recognized the compensability of verbal and physical altercations under certain circumstances.[12] This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[13] Appellant has not established that Ms. Knauss acted abusively or unreasonably on April 25, 2002 and he has failed to establish a compensable factor of employment. Since appellant did not establish a compensable factor of employment, the medical evidence need not be addressed.[14]

The Board finds that the Office properly denied appellant's request for a hearing.

---

[9] *Clara T. Noga*, *supra* note 5 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[10] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[11] *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

[12] *Id.; Denis M. Dupor*, 51 ECAB 482, 485 (2000).

[13] *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).

[14] *Sharon R. Bowman*, 45 ECAB 187, 194 (1993).

Section 8124(b)(1) of the Act provides that "a claimant ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[15] Section 10.615 of the Office's federal regulations implementing this section of the Act, provides that a claimant can choose between an oral hearing or a review of the written record.[16] The regulation also provides that in addition to the evidence of record, the employee may submit new evidence to the hearing representative.[17]

Section 10.616(a) of the Office's regulations[18] provides in pertinent part that

> "[a] claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[19] Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing,[20] when the request is made after the 30-day period for requesting a hearing[21] and when the request is for a second hearing on the same issue.[22]

In this case, appellant's hearing request was postmarked February 3, 2003, more than 30 days after the Office issued the June 28, 2002 decision. Therefore, the Branch of Hearings and Review properly determined that appellant's hearing request was untimely. The Branch of Hearings and Review exercised its discretionary powers in denying appellant's request for a hearing on the basis that he could request reconsideration and in so doing, did not act improperly.

---

[15] 5 U.S.C. § 8124(b)(1).

[16] 20 C.F.R. § 10.615.

[17] *Id*.

[18] 20 C.F.R. § 616(a).

[19] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[20] *Rudolph Bremen*, 26 ECAB 354, 360 (1975).

[21] *Herbert C. Holly*, 33 ECAB 140, 142 (1981).

[22] *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

The March 12, 2003 and June 28, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 27, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member