

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERICK DIAZ and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Miami, FL

*Docket No. 02-751; Submitted on the Record;
Issued February 25, 2003*

DECISION and ORDER

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

The issue is whether appellant has established an emotional condition causally related to his March 3, 2000 employment incidents.

On March 3, 2000 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on that date he sustained emotional stress as a result of a telephone call from a supervisor, Manny Molina. Appellant stated that Mr. Molina wanted to discuss issues that appellant felt required the presence of a union steward; he alleged that he felt threatened when Mr. Molina began yelling at him.

By decision dated April 24, 2000, the Office of Workers' Compensation Programs denied the claim. The Office found that appellant had not substantiated a compensable work factor as contributing to an emotional condition.

In a decision dated January 3, 2001, an Office hearing representative affirmed the April 24, 2000 Office decision.

The Board finds that appellant has not established an injury in the performance of duty on March 3, 2000.

The Board notes that on appeal appellant has referred to a prior claim filed on August 6, 1999 (OWCP File No. 060734186).¹ The last decision with respect to that claim was July 19, 2000. With respect to the Board's jurisdiction to review final decisions of the Office, it

¹ Although appellant filed a traumatic injury claim (Form CA-1), on August 6, 1999 he clearly implicated incidents occurring on more than one workday and the Office developed the claim as an occupational disease claim. A traumatic injury means a condition caused by incidents occurring within a single workday or shift; an occupational disease or illness is a condition produced by the work environment over a period longer than a single workday. See 20 C.F.R. §§ 10.5(q) and (e). Pursuant to this claim the Office considered appellant's allegations of harassment and discrimination.

is well established that an appeal must be filed no later than one year from the date of the Office's final decision.² As appellant filed his appeal on December 27, 2001, the only decision over which the Board has jurisdiction on this appeal is the January 3, 2001 Office decision.

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.³ 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.⁴

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁵

The record indicates that on February 23, 2000 appellant had requested a temporary light-duty position of indoor work for eight hours a day through August 22, 2000. The employing establishment indicated that appellant was advised that he would be converted to a full-time carrier position as of March 11, 2000. With respect to the March 3, 2000 incident, the supervisor, Mr. Molina stated that on that date he spoke with appellant on the telephone regarding the reassignment. Appellant has alleged that Mr. Molina yelled and threatened him, but the record does not substantiate the allegation. Mr. Molina reported that he asked appellant if there were any changes from his doctor with regard to light duty; appellant stated that he did not want to talk to Mr. Molina without a union representative present and appellant hung up the telephone in an unprofessional manner. A statement dated March 14, 2000 from another supervisor, Ilia Gonzalez Marino, reports that she heard appellant speaking to Mr. Molina, but did not hear Mr. Molina's conversation.

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the

² See 20 C.F.R. § 501.3(d).

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

employee.⁶ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁷

There is no probative evidence of error or abuse by the employing establishment with respect to an administrative matter in this case. The record confirms only that Mr. Molina attempted to speak with appellant by telephone on March 3, 2000 regarding a reassignment; no evidence was presented that would establish error or abuse by the employing establishment. When asked by the hearing representative whether an Equal Employment Opportunity (EEO) or grievance had been filed regarding the incident, appellant answered affirmatively, but the record does not contain any evidence or findings to support an allegation of error or abuse.⁸ In the absence of probative evidence, the Board finds that appellant has not substantiated a compensable work factor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

The decision of the Office of Workers' Compensation Programs dated January 3, 2001 is affirmed.

Dated, Washington, DC
February 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ The record contains a Merit Systems Protection Board decision dated October 10, 2000 that dismisses appellant's appeal regarding enforced leave from May 22 to August 18, 2000. This does not appear to be relevant to the March 3, 2000 incidents and in any case does not constitute evidence of error or abuse.

⁹ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).