

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OLIVER F. MIRANDA and U.S. POSTAL SERVICE,
POST OFFICE, Malden, MA

*Docket No. 02-871; Submitted on the Record;
Issued February 24, 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 April 14, 2000 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging that on August 12, 1999 he first realized his depression and stress was employment related. He attributed his depression to being unable to complete his route within the eight-hour time frame, that his "[R]oute 48033 was assessed to be over an eight-hour workday and could not be completed within the time allotted," receiving a disciplinary action due to his failure to complete his route, being harassed and subjected to "badgering and constant street supervision," which occurred over several months, and created a hostile work environment.

In an undated attending physician's report (Form CA-20), Dr. Thomas M. DiResta, diagnosed anxiety and depression due to his employment and noted treatment of appellant from August 12 through December 2, 1999.

In a January 24, 2000 attending physician's report (Form CA-20), Dr. Susan Brown diagnosed adjustment disorder with depressed mood and anxiety which she attributed to harassment and a hostile work environment at work.

By letter dated May 9, 2000, the Office of Workers' Compensation Programs advised appellant that additional factual and medical evidence was needed in order to establish the claim.

Appellant submitted a July 28, 1999 letter of warning regarding his failure to satisfactorily perform his duties; a March 13, 2000 letter from Mr. William A. Johnson; a May 13, 1999 summary of count and inspection; a detail of street supervision for July 6, 8, 20, 21 and 22, 1999 and August 8, 1999; statements from customers on appellant's route; reports by Leo J. Fahey, a licensed social worker dated 1992; a report dated August 12, 1999 by

Dr. DiResta; a report by Susan Webber, a licensed social worker, dated October 22, 1999 and Dr. Brown's January 24, 2000 CA-20 and Dr. DiResta's undated CA-20 form.

Lorraine Blanch, in an undated letter, stated that she did not think that appellant should have been watched and monitored and that she had observed women watching and observing appellant as well as asking questions about him.

In the May 13, 1999 summary of count and inspection, it was noted that appellant had an additional 55 minutes of street time and that he had 2.5 feet of letters and 4.0 feet of flats for a total 6.5 feet of cased volume. The report also noted "No information recorded in dark spaces of the additional 83 stops added to [R]oute 48033."

In an undated letter, Annette M. Cantin, owner of Annette's Cleaners, stated that she observed appellant being followed by someone everyday for a few months.

In an undated statement, appellant noted that William Zampitella, a supervisor, observed him on July 6, 20 and 22 and August 12, 1999 during his delivery of mail that Peter Sands, a supervisor, observed him on July 8, 1999 during his delivery of mail and that Joanne Bennett, a supervisor, observed him delivering mail on July 21, 1999. He noted that on August 8, 1999 he was approached and questioned by Linda Cusack regarding his route. She followed appellant in an automobile driven by Madelyn Giampa, a supervisor, during delivery of his mail. Appellant related that Ms. Cusack asked where he began his route and he responded by requesting her to stop harassing him. Ms. Cusack then asked in a loud voice in front of postal patrons "What time did you leave the Office?" He noted Ms. Blanch, a postal customer, had witnessed this exchange.

In a form report dated August 12, 1999, Dr. DiResta opined that appellant was "emotionally stressed -- unable to function or work" and referred him for psychiatric care.

In a letter dated March 13, 2000, Mr. William A. Johnson, a union representative, stated that appellant's "route became over burdened and he could not finish without assistance because of the increase in volume." He stated that appellant became a daily target of Mr. Sands and Mr. Zampitella.

The employing establishment responded to appellant's allegations by letter dated May 26, 2000. Ms. Bennett, noted that appellant "was generally able to perform required duties." She noted that subsequent to March 1999 when there was a route inspection, appellant "demonstrated that his route was under eight hours, therefore, additional time (approximately 45 minutes) was added to his street delivery." Ms. Bennett noted that on June 29, 1999 appellant "had difficulty completing his eight-hour assignment within the allotted time since his route was adjusted" Due to the inability of appellant and some other carriers, street supervision was initiated to "ensure that the adjustments were effectively implemented" and to correct any deficiencies.

By decision dated July 10, 2001, the Office denied appellant's claim on the basis that he failed to establish that his emotional condition was in the performance of duty. The Office found that appellant had established a compensable factor in that the employing establishment had acted unreasonably on August 9, 1999 when his manager repeatedly asked appellant about his

starting time for his route in front of postal patrons. However, the Office found the medical evidence insufficient to establish that his emotional condition was due to this accepted factor.

Appellant requested reconsideration by letter dated August 3, 2000 and submitted an October 13, 1999 report by Dr. Brown and a July 1, 2001 report by Harry J. Murphy, a licensed social worker, in support of his request.

Dr. Brown diagnosed major depressive and generalized anxiety disorders in an October 13, 1999 report. Under the history of present illness, the physician noted that appellant's difficulties started after March 1999 when his route was inspected and that appellant found it difficult to comply with the new requirements. He related his supervisor began to harass him by keeping track of him on his route.

By decision dated January 25, 2002, the Office denied appellant's request for modification.

The Board finds that appellant has not 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.¹ 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.²

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.³ 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.⁴

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

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ 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.⁶

In the present case, the Office found a compensable factor arose on August 9, 1999 when his manager repeatedly asked appellant about his starting time for his route in front of postal patrons. The Board concurs with the Office's finding that this allegation was substantiated by the factual evidence of record and relates to the performance of appellant's assigned duties.⁷

Regarding appellant's allegation of harassment, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁸

According to appellant, his supervisor harassed him by constantly monitoring his work. In order to substantiate these allegations as compensable work factors, however, there must be probative evidence supporting a finding of harassment or erroneous action in an administrative matter. 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 employee.⁹ 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.¹⁰ With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹¹ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.¹²

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ See *Thomas D. McEuen*, *supra* note 2.

⁸ *William E. Seare*, 47 ECAB 663 (1996).

⁹ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁰ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹¹ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹² *Helen P. Allen*, 47 ECAB 141 (1995).

Appellant submitted allegations regarding dates and times of being followed by management, statements from two of his customers and a statement by a union representative. The probative value of these statements is limited in that they contain no detail or discussion of specific incidents. The statements from Ms. Canton and Ms. Blanch, postal customers, merely note that appellant was monitored for several months, without providing any description of the incidents on which a claim of harassment could be supported. The report from the union representative is similarly deficient in that he states that appellant was harassed without any explanation of description of any alleged harassment. Thus, appellant has not established a compensable factor with regard to these allegations of harassment.

In support of his allegation that he was unable to complete his route within an eight-hour workday, appellant submitted a March 13, 2000 statement from Mr. Johnson, a union representative, who stated that appellant could not finish his route due to the increase in mail volume and the route had become over burdened. Appellant also submitted a May 13, 1999 summary of count and inspection, which noted that he completed the route with an additional 55 minutes of street time. Ms. Bennett, an employing establishment supervisor, submitted a letter dated May 26, 2000 that noted subsequent to a March 13, 1999 route inspection, additional time was added to appellant's route. She addressed his difficulty in completing his postal route on June 29, 1999 within the allotted time. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹³ The Board finds that the evidence of record substantiates a compensable factor of employment with respect to appellant's work on the route.

In this case, there is no medical report¹⁴ which specifically relates appellant's emotional condition to the accepted employment factors, error by the employing establishment on August 9, 1999 when his manager repeatedly asked appellant about his starting time for his route in front of postal patrons and his work duties on the route. Dr. Brown diagnosed anxiety and depression due to appellant's employment. The physician, however, failed to identify the specific work incidents that were responsible for appellant's emotional condition.¹⁵ Therefore, this report does not consist of a rationalized opinion on causal relationship. Similarly, Dr. Brown diagnosed adjustment disorder with depressed mood and anxiety due to harassment and a hostile work environment without identifying specific work incidents. In her October 13, 1999 report, she reported that appellant attributed his condition to being unable to complete his work duties, but she provided no opinion as to the cause of his condition. There is no other medical evidence

¹³ *Trudy A. Scott*, 52 ECAB ____ (Docket No. 99-1670, issued March 14, 2001). See *Lillian Cutler*, *supra* note 2.

¹⁴ Appellant also submitted reports from Leo J. Fahey, a licensed social worker, Susan Webber, a licensed social worker and Harry J. Murphy, a licensed social worker. The Board has held that a report from a licensed clinical social worker is not medical evidence, as it is not the report of a "physician" as defined in section 8101(2) of the Act. Such reports have no probative value on the question of appellant's mental competence. *Frederick C. Smith*, 48 ECAB 132 (1996).

¹⁵ *Dennis J. Balogh*, 52 ECAB ____ (Docket No. 99-1512, issued January 25, 2001). (To establish an occupational disease claim for an emotional condition, a claimant must submit rationalized medical evidence establishing that he or she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor).

of record addressing a causal relationship between appellant's emotional condition and compensable factors of his employment.

Inasmuch as there is no rationalized medical evidence establishing that appellant's emotional condition was causally related to the accepted compensable employment factors, appellant has failed to discharge his burden of proof.

The January 25, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed as modified.

Dated, Washington, DC
February 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member