U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REMA VESCOSI and U.S. POSTAL SERVICE,
POST OFFICE, Salida, CO

Docket No. 01-1712; Submitted on the Record;
Issued June 5, 2003

DECISION and ORDER

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

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

On March 6, 2000 appellant, a 45-year-old distribution clerk, filed an occupational disease claim alleging that she developed an emotional condition which she attributed to stress and a physical injury to her neck and face. She noted that she first became aware of her illness on May 12, 1999.[1]

On April 24, 2000 appellant submitted evidence in support of her claim. She attributed her emotional condition to an incident on May 12, 1999 involving a coworker, Mike Wittouck. Appellant alleged that, as she was working, Mr. Wittouck approached her from behind and pulled a bra strap, snapping it on her back. She indicated that he had done this before and she had asked that he not do it again. Appellant stated that she swung at Mr. Wittouck, but missed. Mr. Wittouck snapped her bra a second time and she swung at him again and made contact in an unknown area. Thereafter, he grabbed her head and began to yell at her. Appellant alleged that, when he let her go, she fell to the floor and experienced discomfort on the right side of her face. She alleged that Mr. Wittouck made a comment about calling the cops and bringing guns to union meetings.[2] Appellant stated that the incident was witnessed by the acting supervisor, Michael S. Daugherty, and a co employee, Carol Kellerman. She submitted medical evidence from Dr. Adrienne Marks, a licensed clinical psychologist, who noted treating her since October 4, 1999 for major depression and a post-traumatic stress disorder.

[1] By decision dated April 20, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the basis that she failed to establish fact of injury in that she did not submit sufficient factual or medical evidence in support of her claim.

[2] The record reflects that appellant served as a union steward at the employing establishment.

The evidence of record reflects that an investigation into the May 12, 1999 incident was conducted by the employing establishment. Mary U. Whaley, an upline supervisor, indicated that she initiated an investigation into the incident following a telephone call from Ms. Kellerman, who provided a written statement dated May 12, 1999. Ms. Kellerman indicated that she heard appellant tell Mr. Wittouck not to snap her bra several times and then observed Mr. Wittouck with a chokehold on appellant, squeezing her jaw. Appellant told Mr. Wittouck to let her go and he was taunting her. When he let her go, she was standing at her case and rubbing her jaw. Appellant admonished Mr. Wittouck not to ever do that again. Mr. Daugherty then intervened and appellant returned to casing mail before meeting with Mr. Daugherty.

Mr. Daugherty stated that, up to the time of the incident, appellant and Mr. Wittouck had enjoyed a close relationship and often joked and interacted playfully at work. He stated that at the time Mr. Wittouck grabbed appellant, Mr. Wittouck had one hand full of mail and that he did not shake appellant's head. Mr. Daugherty noted that appellant did not fall to the floor and that the incident lasted approximately five seconds. He met with appellant, who declined contacting management concerning the incident. Mr. Daugherty noted that appellant did not want to speak with Mr. Wittouck that evening, but the following night Mr. Wittouck apologized and things went "back to normal." He stated that he spoke with appellant several times about reporting the incident but that she did not want him to make any report. On May 13, 1999 the following evening, Mr. Daugherty spoke to Supervisor Whaley by telephone and expressed concern that two good friends were in a situation which could have repercussions for both.

On May 14, 1999 the Postal Inspection Service was contacted concerning an alleged physical assault. On May 17, 1999 appellant was interviewed by Supervisor Whaley, at a meeting with W.D. Bennett, a postal inspector, and Todd Davis, a union representative. She advised that she had not prepared a written statement concerning the incident and that she and Mr. Wittouck were involved in horseplay, which was common in the office. In a May 17, 1999 memorandum of the interview, appellant noted that Mr. Wittouck had been bugging her, engaged in physical horseplay while pulling down mail and denied that she had hit him at any time. She stated that he had grabbed at her clothing, denying it was her bra strap and that she had reached behind and pushed him out of the way, not knowing where she touched him. He then put her face in his hand, holding her jaw. Appellant stated that she did not know what Mr. Wittouck was saying to her because he was so loud, but that she told him to knock it off and he let go. She related that Mr. Wittouck later apologized and she told him not to worry about it. Appellant noted that she was not upset at that time or she would have gone home. She picked up a safety package, including a claim form, because she was "pissed" at Mr. Wittouck. Appellant advised that she did not seek medical attention nor believe she was injured during the incident. She indicated that she felt the incident had been blown out of proportion, that the night supervisor had handled the situation and that she knew nothing about any reference to a gun at a union meeting.

On May 17, 1999 Mr. Wittouck was also interviewed by Supervisor Whaley, with Mr. Bennett and Mr. Todd present. Mr. Wittouck noted that he had not prepared a written statement concerning the incident to Mr. Daugherty. He related that he and appellant were good friends and socialized off the clock; he described their relationship as like brother and sister. Mr. Wittouck stated that they teased each other from time to time and routinely engaged in horseplay at the office to relieve boredom and monotony. He stated that he did snap appellant's

bra strap on the night of May 12, 1999 and snapped it again after she told him not to do so. Mr. Wittouck stated that appellant became angry, pushed him away with her hand and hit him in the groin. To get her attention, he grabbed her face and told her what he had done was in fun and she responded with something to the effect of "fair is fair, tit for tat." Had he not been in pain, he would have grabbed her shoulders and not her face. Mr. Wittouck denied any recollection about making any statement about guns. He reiterated that the incident was horseplay that had escalated and took responsibility for the incident.

On May 19, 1999 Mr. Bennett forwarded the report of his investigation and statements to the postmaster, Rob Whitman, for a decision on whether any disciplinary action was warranted.

In a May 20, 1999 note, Supervisor Whaley indicated that she was approached by appellant in the evening on Monday, May 17, 1999 to speak in private. Appellant told Ms. Whaley that she had lied during the investigation interview earlier that day. She recounted that there was a union meeting the previous day and that the union president, among others, was concerned that if she told the truth it would cost Mr. Wittouck his job. Appellant related that Mr. Wittouck had snapped her bra. Mr. Whaley advised appellant that, if she wanted to set the record straight, she needed to speak with the postmaster.

As a result of the investigation, appellant and Mr. Wittouck were both disciplined. It was found that he had snapped her bra strap and she responded by punching him in the groin, he then became angry and grabbed her jaw. They initially received letters of removal for unacceptable conduct. Following grievances, appellant's case was settled on July 26, 1999. Appellant's removal was reduced to a three-week suspension from July 17 to August 9, 1999. It was noted that appellant was involved in a physical altercation but did not fully and honestly cooperate in the investigative procedure. Mr. Wittouck received a two-week suspension, on June 28, 1999. It was further noted that he had been truthful concerning his actions, acknowledged responsibility and had cooperated in the investigative procedures. His suspension ran from July 17 to 30, 1999. The record reflects that appellant worked following the May 12, 1999 incident until her suspension on July 17, 1999.[3] Appellant did not return to work, utilizing annual and sick leave and leave under the Family Medical Leave Act (FMLA).[4]

Appellant alleged in her claim filed on March 6, 2000 that she was assaulted by Mr. Wittouck while engaged in the performance of duty. She contended that the incident rose to the level of sexual harassment and was not provoked or imported from her private life and denied any close relationship with Mr. Wittouck. Even if considered as horseplay, appellant contended that the incident constituted a compensable factor of employment. She alleged that Mr. Daugherty had not taken appropriate corrective action to the assault or threat of bringing guns into the workplace or in reporting the incident to his superiors. Appellant alleged this amounted to a cover up and that he pressured her not to report the incident. She alleged that the

[3] On May 28, 1999 appellant advised Mr. Whaley that she struck her elbow on a pie cart. She used annual leave for the period June 1 to 11, 1999 and sick leave on June 17 and 18, 1999.

[4] On November 30, 1999 appellant was advised that her 12-week entitlement to Family Medical Leave Act leave expired as of December 3, 1999. She was advised of the requirement to submit medical evidence to support use of sick leave. On January 19, 2000 appellant was advised that failure to provide medical evidence would result in being charged either leave without pay or put in an absence without leave status.

employing establishment failed to take appropriate corrective action when she stated that she had lied to the postal investigator, arguing that discipline after "recanting" her testimony was administrative error. Appellant alleged intimidation, after she met with members of the night crew following a union meeting on Sunday, May 16, 1999. She argued that there was disparate punishment between Mr. Wittouck's two-week suspension and her three-week suspension and that the employing establishment erred by notifying the police that the notices of proposed removal would be issued. Appellant also alleged error on the part of the postmaster in contacting several employers after she stopped work and advising as to her eligibility to work while on leave.[5] Additional evidence was submitted in support of her claim.

The employing establishment controverted the claim. It contended that the two parties had a long-standing personal relationship outside the workplace and that the incident did not arise out of any activity directly related to their work. The employing establishment noted that appellant did not make any written report of the incident to any supervisor and that she acknowledged lying to the postal inspector in an effort to protect Mr. Wittouck from losing his job. The employing establishment also contended that appropriate administrative and disciplinary actions were taken. The employing establishment noted that appellant's conversations with union members on May 16, 1999 took place after a union meeting, not on the employing establishment premises and not while she was on the clock. Additional evidence was submitted. On June 15, 2000 Supervisor Whaley noted that, following the May 12, 1999 incident, employees on the tour advised her that appellant had participated in prior horseplay with Mr. Wittouck, made comments concerning body parts and had allowed physical contact by Mr. Wittouck and others, generally when supervisors were not present.

In a decision dated June 22, 2000, the Office, after reviewing the evidence of record, denied appellant's claim. Appellant, through her attorney, requested reconsideration on October 13, 2000 and submitted additional evidence in support of her claim. By decision dated March 20, 2001, the Office denied modification of the June 22, 2000 decision.

Initially, the Board notes that, in adjudicating the claim, the Office found that appellant "removed herself from the performance of duty when she reacted violently to horseplay that she had permitted and subjected herself to previously." The Board does not agree.

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[6] The phrase "while in the performance of duty" in the Act has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[7] In the course of employment deals primarily with the work setting, the locale and time of the employee's performance of his or her work duties; "arising out of the employment" encompasses not only the work setting but also a

[5] Appellant worked at several restaurants and a ski area.

[6] *Lenneth W. Richard*, 49 ECAB 337 (1998).

[7] *Lee R. Haywood*, 48 ECAB 145 (1996).

causal concept, the requirement being that the employment caused the injury.[8] In determining whether an injury is covered by the Act, the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.[9] For this reason, appellant has the burden of establishing the occurrence of an alleged injury: (1) at a time when the employee may reasonably be said to be engaged in her master's business; (2) at a place where the employee may reasonably be expected to be in connection with the employment; and (3) while the employee was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[10]

There is no dispute that, at the time of the May 12, 1999 incident, appellant was at a place and time where she was expected to be in order to carry out the business of the employing establishment. Appellant was at her work case sorting mail when Mr. Wittouck, apparently carrying mail himself, walked up behind her and snapped her bra strap. The evidence reflects that this incident annoyed appellant who struck Mr. Wittouck in the groin. Thereafter, he became angry and grabbed her jaw. While the Office rejected the claim on the grounds that appellant became the aggressor and "started a physical altercation" with Mr. Wittouck, there is no provision under the Act authorizing the denial of compensation because the employee was an "aggressor" or "initiator."[11] In *Robert L. Williams*,[12] the Board stated:

> "There is no provision in the [Federal] Employees' Compensation Act authorizing the denial of compensation because the employee was engaged in 'skylarking,' in 'horseplay,' or any other similar activity; or because the employee was an 'aggressor,' or the 'initiator,' or otherwise did something imputing culpability or fault on his part."[13]

Whether or not horseplay is a deviation from the course of employment depends on several factors: (1) the extent and seriousness of the deviation; (2) the completeness of the deviation, *i.e.*, whether it commingled the performance of duty or involved an abandonment of duty; (3) the extent to which the practice of horseplay had become an accepted part of the employment; and (4) the extent to which the nature of the employment may be expected to include some horseplay.[14]

Applying these factors to the evidence of record, it is apparent that appellant and Mr. Wittouck were casing mail at the time he approached appellant and snapped her bra strap. The record indicates that the individuals had a friendship in which various incidents of verbal

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[8] *Maribel Dayap*, 48 ECAB 248 (1996).

[9] *Leo Boyd Purrinson*, 30 ECAB 644, 646 (1979).

[10] *Mary Keszler*, 38 ECAB 735, 739 (1987); *Christine Lawrence*, 36 ECAB 422, 424 (1985).

[11] *Harold Murphy*, 46 ECAB 746 (1995); *Allan B. Moses*, 42 ECAB 575 (1991).

[12] 1 ECAB 80 (1948).

[13] *Id.* at 82.

[14] *Eric J. Koke*, 43 ECAB 638 (1992); *Barry Himmelstein*, 42 ECAB 423 (1991).

and physical teasing, sexual bantering and physical familiarity had previously occurred to break the work routine and monotony.[15] As such, the snapping of the bra strap, commingled with the performance of sorting mail, cannot be said to have been an abandonment of duty under the facts of this case.

The Board has differentiated between injuries occurring from horseplay between employees and injuries arising from the importation of private animosities which culminate in an assault in the workplace. In *Eric J. Koke*,[16] the record revealed horseplay in which employees shot rubber bands at each other on a routine basis. The claimant sustained injury following a physical altercation in which his assailant, a coworker, allegedly hit him in the chin after ignoring a request to stop shooting rubber bands. The Board noted the history of horseplay at the employing establishment, but rejected the claim on the fact there were such inconsistencies in the evidence as to cast validity on claimant's allegation that he had been struck in the jaw by his coworker. In *Robert L. Williams*,[17] the claimant alleged injury while standing in line to punch a time clock. The evidence reflected that the claimant, in a friendly greeting, slapped a coworker lightly on the chest; who then pushed the claimant causing him to fall. The Board noted that the "friendly scuffle" while waiting to clock out did not constitute willful misconduct or was caused by intent to bring about injury, but was incidental to the employment and arose in the performance of duty. In *John H. Woods, Jr.*,[18] the claimant sustained a low back injury when kicked by a coworker while clocking into work at the commencement of his regular shift. The Board remanded the case for further development on the issue of whether the incident was due to horseplay or to a private dispute imported into the workplace from the claimant's private life.[19]

There is no evidence that the May 12, 1999 incident arose out of animosity or a dispute imported into the employment workplace from the appellant's private life. On the contrary, the evidence reflects the personal relationship of the parties was such that various acts of horseplay and teasing had occurred between them in the employment setting. The fact that appellant and Mr. Wittouck had been to one another's homes and occasionally socialized does not preclude a finding of horseplay, rather than a private dispute, giving rise to the May 12, 1999 altercation. For these reasons, the Board finds that the May 12, 1999 incident occurred and that it arose in the performance of duty. The decision of the Office, finding that appellant had removed herself from the performance of duty when she struck Mr. Wittouck, will be modified.

[15] In a deposition, Mr. Wittouck testified as to his social interaction with appellant at work and outside of the workplace. Prior acts of horseplay consisted of giving appellant a wedgie and picking her up by her belt. He noted exchanging comments of sexual innuendo or banter, nicknames and that appellant received back rubs from Mr. Wittouck and other employees.

[16] *Eric J. Koke, supra* note 14.

[17] *Robert L. Williams, supra* note 12.

[18] 39 ECAB 971 (1988).

[19] Larson, in addressing assaults arising out of the employment, states: "Assaults arise out of the employment … if the reason for the assault was a quarrel having its origin in the work." Larson, *The Law of Workers' Compensation*, § 11.00. *See Sylvester Blaze*, 37 ECAB 851, 853 (1986).

The Board finds, however, that appellant has failed to show that she sustained an emotional condition as a result of the May 12, 1999 incident.[20]

In the present case, appellant has not alleged an emotional condition arising from the performance of her regular or specially assigned duties.[21] Rather, she has attributed her emotional condition to the May 12, 1999 incident and to the administrative/disciplinary actions culminating there from. In response to Mr. Wittouck snapping her bra strap, appellant struck him in the groin following which he grabbed her by the jaw. In this regard, it is well established that physical altercations may give rise to a compensable work factor.[22] As appellant has cited a compensable incident of her employment, the Board must determine whether the medical evidence of record supports that this incident caused an emotional condition.

In support of her claim, appellant submitted several reports from Dr. Marks. In a narrative report dated May 27, 2000, Dr. Marks noted that she had treated appellant since October 4, 1999 for major depression and post-traumatic stress disorder. Regarding the cause of these conditions, Dr. Marks offered her opinion as follows:

> "I believe the precipitating and likely causative events of the depression and PTSD are the incidents [appellant] describes as having happened to her during her employment at the [employing establishment]. They include the sexual harassment of having her bra strap snapped more than once and having had no response to her complaint to supervisors, and the fact that she was struck in the face by an employee with no help and no support offered from supervisors. This, apparently, was followed by attempts to make her feel guilty if she followed upon her report of the incident. She was then imtimidated into denying the whole thing to the Postal Inspector.…"

The history of injury appellant provided to Dr. Marks does not focus on the horseplay incident itself, but rather assumes that the May 12, 1999 incident constituted sexual harassment and assault. However, the evidence and appellant's own conduct belie the assertion. As noted above, appellant and Mr. Wittouck had a friendship at work in which they would tease one another or otherwise break the workday routine through horseplay. The May 12, 1999 horseplay incident differed in that it culminated in a physical altercation. Following the incident, appellant continued to work without apparent difficulty and declined several offers of acting supervisor Daugherty to report the incident to management. There is no evidence appellant ever reported the incident and it was not characterized as a sexual assault/harassment until she filed her claim. The record reflects that the matter was investigated only after a telephone call of Ms. Kellerman, a witness, to Supervisor Whaley. Thereafter, appellant continued to work without difficulty, apparently accepting an apology from Mr. Wittouck. Prior to meeting on May 17, 1999 with employing establishment officials investigating the matter, appellant met with Mr. Wittouck and

[20] While appellant noted a physical injury on her claim form, that aspect of the case was not pursued.

[21] *See Lillian Cutler*, 28 ECAB 126 (1976).

[22] Physical contact by a coworker may give rise to a compensable employment factor. *See Karen E. Humphrey*, 44 ECAB 908 (1993); *Constance G. Patterson,* 41 ECAB 208 (1989).

other union officials on May 16, 1999 to discuss the upcoming investigation, which appears contradictory to her allegations of sexual assault and harassment. While appellant has alleged that she was "intimidated" to alter her statement to investigators in order to save Mr. Wittouck's job, the allegation is not supported by the statements of record. On May 17, 1999 she told investigators that she was involved in horseplay with Mr. Wittouck, who had grabbed at her clothing and not her bra strap; a minor point to be sure, but again appellant's statements to the investigators undermines the allegation of assault and sexual harassment raised by her claim. Appellant advised the investigators that she had accepted Mr. Wittouck's apology. She acknowledged that she did not seek medical attention and the first evidence of medical treatment does not appear until October 4, 1999, approximately five months after the incident and following the disciplinary proceedings of the agency. These inconsistencies, which neither appellant nor her psychologist have adequately explained, cast serious doubt on the validity of her subsequent allegations of sexual harassment and assault to Dr. Marks. Medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim.[23] As appellant has not submitted a medical report which supports that she sustained the diagnosed conditions due to the horseplay incident itself, appellant has not met her burden of proof regarding this accepted incident of employment.

The Board has held that incidents alleged as constituting harassment or discrimination can give rise to coverage under the Act; however, there must be evidence to establish that the acts alleged did, in fact, occur.[24] Mere perceptions of harassment or discrimination are not compensable. The issue in such cases is not whether the claimant has established harassment or discrimination under standards applied to Equal Employment Opportunity Commission cases. Rather, under the Act, the issue is whether the claimant has submitted sufficient evidence to establish an injury in the performance of duty. In the present case, the validity of appellant's allegations of the May 12, 1999 incident as constituting an assault or sexual harassment are not supported by the statements of the witnesses of record. The incident can best be described as horseplay between two coworkers, not an assault or sexual harassment.

With regard to the conduct of her supervisors and the investigation of the incident, the Board has noted that the employer has a right to conduct investigations if wrongdoing is suspected.[25] Investigations are an administrative function of the employing establishment and do not involve an employee's regular or specially assigned duties. An administrative matter will not be considered an employment factor unless the evidence discloses error or abuse on the part of employing establishment personnel.[26] The statements of Mr. Daugherty reflect that appellant and Mr. Wittouck engaged in horseplay and that he met with appellant following the incident, but she declined to report it to management. He noted speaking with appellant several times as to this issue, but neither she nor Mr. Wittouck sought to make any report. Appellant's allegations that Mr. Daugherty did not take appropriate corrective actions are not supported by

[23] *See Maribel Dayap,* 48 ECAB 248 (1996).

[24] *Constance I. Galbreath*, 49 ECAB 401 (1998).

[25] *Bernard Snowden*, 49 ECAB 144 (1997).

[26] *Patricia A. English*, 49 ECAB 532 (1998).

the record nor does the evidence reflect that he pressured appellant in any way not to report the incident. Appellant acknowledged to investigators that she spoke the following evening with Mr. Wittouck, accepted his apology, did not believe she was injured and knew nothing of any statement or reference to guns. The investigative reports of Mr. Bennett and statements of Supervisor Whaley reveal that management took appropriate action to investigate the matter after it was called to their attention by Ms. Kellerman. The most contemporaneous evidence reveals appellant, while making factually inconsistent statements as to whether it was her clothes or bra strap that was touched and denying knowledge as to any statements made concerning guns, minimized the horseplay. To investigators she stated that the whole matter had been blown out of proportion. The statements of the witnesses are insufficient to establish intimidation or coercion into changing elements of her statements to the investigators.

There is no evidence of any "cover up" as alleged. The record shows that the employing establishment has a "zero tolerance" policy regarding verbal and physical altercations at work, of which appellant and Mr. Wittouck stated that they were both aware. Appellant admits that she made contradictory statements to management personnel investigating the incident and that she had lied to the postal inspector, a violation of the postal service code of conduct. The evidence therefore supports that the postmaster, Mr. Whitman, acted properly within his discretionary authority to impose discipline on both parties. As noted, Mr. Wittouck ultimately received a two-week suspension and appellant a three-week suspension. The settlement agreements reflect that any "disparity" in the punishment was based on various factors, including the parties' respective cooperation with the investigators and Mr. Wittouck's status as a war veteran. The fact that the employing establishment reduced the penalty to a suspension or imposed an extra week of suspension on appellant is not evidence of administrative error or abuse.[27] The Board has held that an employing establishment must retain the right to investigate if wrongdoing is suspected or part of an evaluation process.[28] The horseplay incident report by Ms. Kellerman raised an issue of an assault in the workplace, prompting the investigation and eventual discipline of appellant and Mr. Wittouck. Appellant's emotional reaction to these administrative matters does not constitute a compensable factor of employment. The record reflects that appellant did not stop work following the incident. Mr. Wittouck, on the other hand, stopped work and thereafter began to receive treatment for depression. The case record does not reflect any error or abuse on the part of Ms. Whaley in contacting the police prior to issuing the removal notices. Based on the conflicting testimony of appellant and statements heard by other witnesses, there was legitimate concern for the safety and welfare of the workplace upon issuance of the disciplinary actions. While the record indicates that the gun comment may have been poor subject matter for a joke, under the zero tolerance policy management did not commit error or abuse in taking precautions prior to notifying the parties as to the disciplinary actions. The allegations concerning these matters do not rise to the level of constituting a compensable factor of employment.

After appellant stopped work, the record reflects that she used sick and annual leave and leave under the FMLA. The record reflects that Mr. Whitman requested periodic medical reports to support her leave requests and, upon learning that appellant secured employment at several

[27] *Garry M. Carlo*, 47 ECAB 299 (1996).

[28] *Larry J. Thomas*, 44 ECAB 291 (1992).

private employers, made inquiry as to her employment status. It is well established that the handling of leave requests and attendance matters are administrative functions of the employer and not duties of the employee.[29] The evidence of record does not establish error or abuse on the part of the postmaster in making efforts to assure that appellant's leave status conformed to applicable leave policies. To the extent that appellant was advised to submit medical evidence to support her requests for sick or other medical leave, the record reflects that she was merely requested to conform to appropriate leave procedures. Mr. Whitman's telephone inquiries to the private employers were to obtain information concerning appellant's employment while in a leave status. His actions were not unreasonable or abusive. As such, these administrative matters do not constitute compensable factors of employment.

The Board finds that, while appellant has established that the May 12, 1999 horseplay incident occurred in the performance of duty and is a compensable factor of employment, appellant has not submitted probative medical evidence to establish that she sustained an emotional condition as a result. Furthermore, the resulting investigation and disciplinary actions are not established as compensable factors of employment. For these reasons, appellant has not met her burden of proof to establish that she sustained an emotional condition in and out of the course of her employment.

The decisions of the Office of Workers' Compensation Programs dated March 20, 2001 and June 22, 2000 are affirmed, as modified.

Dated, Washington, DC
June 5, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[29] *James P. Guinan*, 51 ECAB 604 (2000).