

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHRIS S. HAMES and U.S. POSTAL SERVICE,  
COVINA FEDERAL STATION, Covina, CA

*Docket No. 02-843; Oral Argument Held April 16, 2003;  
Issued June 11, 2003*

Appearances: *Chris S. Hames, pro se; Julia Mankata-Tamakloe,*  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition on October 16, 1999.

Appellant, a 26-year-old letter carrier, filed a notice of traumatic injury on October 25, 1999 alleging that he sustained an emotional condition on October 16, 1999. Appellant stated that a coworker, Michael Chang, ran to appellant's case and started cursing and yelling at appellant. He stated that Mr. Chang had to be physically restrained and taken outside. On the reverse of the form, appellant's supervisor, Wilbert Jackson, indicated that appellant had an "argument or disagreement with another."

On November 18, 1999 the Office of Workers' Compensation Programs denied appellant's claim finding that the employment incident did not occur as he alleged. Appellant requested an oral hearing on December 15, 1999. By decision dated October 2, 2000, the hearing representative vacated the November 18, 1999 decision, finding that although appellant exaggerated the argument on October 16, 1999 an incident did occur in the performance of duty on this date. The hearing representative remanded for additional development of the medical evidence.

By decision dated February 7, 2001, the Office denied appellant's claim. Appellant requested an oral hearing. In an October 22, 2001 decision, the hearing representative affirmed the Office's February 7, 2001 decision.

The Board finds that appellant has not established that he 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 illness

has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.<sup>1</sup>

In this case, appellant attributed his emotional condition to the argument or altercation with his coworker, Mr. Chang, on October 16, 1999. The Board has recognized the compensability of verbal altercation or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.<sup>2</sup>

Appellant submitted a narrative statement alleging that he was attacked by a fellow carrier, Mr. Chang, on October 16, 1999. Appellant stated that Mr. Chang yelled and cursed at him and had to be physically restrained by a supervisor, Joanne Duncan. He stated that Ms. Duncan had to grab Mr. Chang and that he was trying to push her away to get to appellant.

In a statement dated October 22, 1999, a witness, Marisol Rivas, stated that appellant was angry because Mr. Chang had not delivered his parcels. Mr. Chang stated that he had not had time as appellant had not pulled down the mail for him to deliver. Appellant then called Mr. Chang a jackass. In an undated statement, Sara Enriquez, stated that appellant had a discussion with Mr. Chang. Mr. Chang was working and appellant asked loudly about the parcels. Mr. Chang stated that appellant did not pull down the mail for the swing. Appellant told Mr. Chang to shut up and he refused. Appellant then invited Mr. Chang outside. Ms. Duncan then pulled Mr. Chang away to talk to him outside. On November 2, 1999 Steve P. Romu completed a witness statement alleging that appellant asked why Mr. Chang had not delivered the parcels, that Mr. Chang asked why appellant did not pull down the mail and that the two argued a little. Robert W. Coop stated that appellant asked if Mr. Chang was going to pull down the swing and that Mr. Chang said okay. Mr. Coop said that Mr. Chang seemed upset by this.

Mr. Chang completed a statement on October 19, 1999 and stated that appellant asked why he had not delivered the parcels. He responded by asking why appellant had not pulled down the swing. Appellant stated that Mr. Chang had agreed to do so and Mr. Chang then called appellant a liar. He stated that appellant made an obscene gesture and that he told appellant that he was a lousy carrier. Appellant then stated that he was not afraid of Mr. Chang and was going to write a statement. Ms. Duncan then stood between appellant and Mr. Chang and asked Mr. Chang to go outside.

Ms. Duncan, an acting supervisor, submitted three statements. She stated that appellant and Mr. Chang had a disagreement or argument on October 16, 1999. Ms. Duncan stated that Mr. Chang never took a step toward appellant and that she took Mr. Chang outside so the

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

argument would stop as they were loud and using foul language. Ms. Duncan stated that she did not feel that there would be any physical contact between the two. In her second statement, Ms. Duncan stated that Mr. Chang was upset when she arrived on October 16, 1999 because appellant had not pulled down the mail for the swing. She later saw appellant and Mr. Chang arguing. Ms. Duncan stated that, both parties were saying bad things; Mr. Chang said appellant was a bad carrier and appellant said that at least he did not kiss ass and run his route down. Ms. Duncan then approached Mr. Chang as he was closer to her and asked him to go outside. Mr. Chang continued talking. Ms. Duncan walked in front of him as he was pointing at appellant. Appellant cursed and told Mr. Chang not to point, that he was going to write a statement. Ms. Duncan then put her arms around Mr. Chang to get him to go outside to the dock. He did and then both men returned to work with no further incident. In an additional statement, Ms. Duncan stated that she first told Mr. Chang to go outside, that when he did not move she put her arms around him. She stated, "I did not use force with [Mr. Chang] and he was not pushing or trying to get away from me, he was just standing not moving then he finally went with me out on the dock to talk."

The Office accepted that the verbal altercation occurred on October 16, 1999. However, the Office found that based on the witnesses' statements that the incident was not as severe as appellant stated and did not include the threat of physical violence as alleged by appellant. The Board finds that the factual evidence included in the record establishes a compensable employment factor in the October 16, 1999 verbal altercation with Mr. Chang. The Board finds that there is no evidence to support appellant's allegation that Mr. Chang had to be physically restrained from causing appellant harm.

To establish appellant's claim that he has sustained an emotional condition in the performance of duty appellant must submit the following: (1) factual evidence identifying the employment incident alleged to have caused his condition; and (2) rationalized medical opinion evidence establishing that the identified compensable employment incident is causally related to his emotional condition.<sup>3</sup> Rationalized medical opinion evidence is medical evidence, which 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. The 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 the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

Appellant previously filed a claim for an emotional condition, which was denied by the Office. Appellant's attending physician, Dr. James Skalicky, a clinical psychologist, provided treatment for this condition at the time of the October 16, 1999 employment incident. In a report dated April 8, 2000, Dr. Skalicky stated that appellant suffered from anxiety as a direct result of the stressful events associated with the outburst of anger from Mr. Chang. He stated that the inappropriate aggression caused appellant's present level of suffering. He indicated that appellant was disabled. Dr. Skalicky diagnosed adjustment disorder. Dr. Skalicky further stated

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<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>4</sup> *Id.*

that appellant's fear of being physically attacked and related administrative harassment caused his anxiety and depression to rise to clinical levels.

On March 31, 2001 Dr. Skalicky attributed appellant's condition to events in 1997 as well as Mr. Chang's "outburst of anger." He diagnosed adjustment disorder mixed.

The Office referred appellant and a statement of accepted facts to Dr. Reynaldo Abejuela, a Board-certified psychiatrist. The statement of accepted facts noted:

"The claimant had an exchange with [Mr.] Chang on October 16, 1999, which can best be described as a minor disagreement concerning a work-related issue. The claimant was neither physically attacked nor challenged by Mr. Chang. Mr. Chang did not approach the claimant.<sup>5</sup> Although this occurred in full view of coworkers and other witnesses, no one was moved to physically intervene. Mr. Chang left briefly with another employee with whom he had a discussion on the work 'dock.' The exchange quickly resolved and both employees returned to their assignments, seemingly without incident."

In his December 28, 2000 report, Dr. Abejuela reviewed the statement of accepted facts and noted appellant's statement regarding the history of injury. He found that appellant's mood was without evidence of severe depression or anxiety. Dr. Abejuela stated that based on the statement of accepted facts, appellant had no diagnosis. He stated, "The current mental status examination showed no evidence of anxiety or depression. Thought content was intact. Affect was appropriate to mood. Short term and long term memory, as well as concentration were intact." Dr. Abejuela concluded that the incident of October 16, 1999 did not establish a psychiatric diagnosis and that appellant did not have any psychiatric disability.

The Board finds that Dr. Abejuela's report was based on a proper factual background and examination of appellant. He found no diagnosed emotional condition as a result of the accepted employment incident. The reports of Dr. Skalicky are based on appellant's description of the October 16, 1999 employment incident, which the Board has found are exaggerated. The Board further notes that Dr. Skalicky attributes appellant's condition to alleged employment factors, which do not relate to this claim. For these reasons, the Board finds that appellant has not established that he sustained an emotional condition as a result of the October 16, 1999 employment incident.

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<sup>5</sup> At the July 30, 2001 oral hearing, appellant disputed the statement that Mr. Chang had not approached him, noting that Mr. Chang came to appellant's work site at the beginning of the argument. The Board notes that given the location of this sentence in the structure of the paragraph it clearly refers to the fact that Mr. Chang did not invade appellant's personal space once he had arrived at the site of the argument and the argument had begun.

The October 22 and February 7, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
June 11, 2003

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member