

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH MITCHELL and U.S. POSTAL SERVICE,
POST OFFICE, Palm River Annex, FL

*Docket No. 03-694; Submitted on the Record;
Issued June 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to compensable factors of his federal employment.

On January 11, 2002 appellant, then a 53-year-old letter carrier, filed a claim alleging that he developed stress and depression due to untrue accusations of falsifying documentation. The employing establishment controverted appellant's claim noting that he brought this about by his own conduct in falsifying official documents. Appellant stopped work on January 12, 2002 and did not return until January 18, 2002.

In support of his claim, appellant submitted a January 3, 2002 report from the employing establishment which noted that he forgot to deliver a piece of express mail, that he claimed that the recipient had not been home anyway during his delivery time and that he had improperly annotated the package that delivery had been attempted at 11:45 am on January 2, 2002. A supervisor later delivered the express mail and discovered that the recipient had been home the entire day.

By letter dated January 25, 2002, the employing establishment noted that appellant failed to deliver an express mail piece on January 2, 2002, but he falsified the label on the express mail in an attempt to cover up his failure to deliver the express mail to the customer. It noted that appellant advised the employing establishment that he would be out of work until January 18, 2002 due to stress and depression. He alleged that his stress and depression were caused by the station manager who falsely accused him of falsifying and delaying delivery of an express mail piece. The employing establishment noted that any stress appellant experienced was self-induced from fabricating the truth, willfully falsifying an official document, and then realizing that repercussions would ensue due to his actions. It alleged that appellant's emotional symptoms were as a result of his reaction to an investigative interview concerning his handling of express mail.

An investigative memorandum found that appellant forgot the express mail on January 2, 2002, that a person designated to receive the express mail had been home all day, but that appellant falsified a "delivery attempted" label. The intended recipient of the express mail stated that she did not receive any delivery notice/ reminder/ receipt from the employing establishment that date. The employing establishment alleged that appellant filled out the Label 11-B to benefit himself. The employing establishment thereafter controverted appellant's claim alleging that appellant's claim for stress and depression was due to his reaction to an investigative interview concerning his handling of a piece of express mail.

By decision dated February 13, 2002, the Office of Workers' Compensation Programs rejected appellant's emotional claim finding that being investigated for falsifying paperwork regarding nondelivery of an express mail package, which was improper behavior, was not considered to be a compensable factor of employment. The Office found that appellant had not established an emotional injury in the performance of duty.

On March 10, 2002 appellant, through his designated representative, requested an oral hearing before an Office hearing representative.

A hearing was held on October 22, 2002 at which appellant testified. Appellant claimed that he was harassed by having Leonard Goss go through his truck to determine length of delivery route and accuse him of lying, that he was harassed and threatened by Mr. Goss for the amount of time to be spent on his route, that he was told what mail to case and was told not to case marriage mail cards, that he left a piece of express mail on top of his case, that he was accused of falsifying a slip regarding express mail, that a postal inspector was called to deal with this falsification and that he had to work in a hostile work environment. However, no specific dates and times of harassment or witnesses involved were identified. Appellant testified that Mr. Goss harassed everybody in the building, and that several grievances were filed regarding a hostile work environment. Appellant opined that Mr. Goss was threatening his livelihood and attempting to get him fired.

By letter dated November 16, 2002, appellant's supervisor contradicted appellant's allegations stating that he never harassed appellant, that appellant had not been harassed, attacked or threatened by anyone at the employing establishment and that appellant was not subjected to undue stress or pressures at work. He indicated that appellant falsified the document and when he was discovered he filed a claim for stress.

In a November 27, 2002 statement, Julius C. Howard, Jr., a coworker of appellant's, alleged that they worked in a hostile work environment and that Mr. Goss subjected appellant to harassment, intimidation, threats, bullying, humiliation and stalking. Mr. Howard claimed that the employees had a class action suit against Mr. Goss.

By decision dated January 2, 2003, the hearing representative affirmed the February 13, 2002 decision finding that appellant had not established incidents of harassment and that investigation leading to his termination was for cause and was an administrative function.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant.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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Id.*

⁴ *See supra* note 3; *see also Lillian Cutler*, 28 ECAB 125 (1976).

employment and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be “in the performance of duty.”⁶

When working conditions are alleged as factors in causing 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 providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant’s emotional condition, then the medical evidence of record need not be considered.¹⁰

In this case, appellant did not allege that he developed an emotional condition arising out of his regular or specially assigned duties, or out of specific requirements imposed by his employment. He alleged, for the most part, that his condition was caused by supervisory actions and harassment, intimidation, threats, bullying, humiliation and stalking. However, neither appellant nor his coworker provided any specific information about any of these alleged incidents or occurrences.¹¹ No specific acts constituting harassment, intimidation, threats, bullying, humiliation or stalking were identified or corroborated by the evidence submitted to the record. The Board has held that actions of an employee’s supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹² However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹³ The Board finds that, based upon the

⁵ *Id.*

⁶ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁷ See *Barbara Bush*, 38 ECAB 710 (1987).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁰ See *supra* note 5.

¹¹ Information such as time, place, circumstances and persons involved in the harassment or intimidation incidents were omitted from the record.

¹² *Sylvester Blaze*, 42 ECAB 654 (1991).

¹³ See *supra* note 9.

evidence of record, appellant has failed to submit any specific, reliable, probative and substantial evidence in support of his harassment allegations, which he had not even made until he testified at the oral hearing. Appellant has the burden of establishing a factual basis for his allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Appellant also alleged that he was erroneously accused by his supervisor of falsifying an official report, a delivery attempt form and delaying express mail. He characterized this accusation as harassment, as he also did the investigative process which followed. The record supports that appellant completed a delivery attempt form for January 2, 2002, the date in question, despite the recipient being at home that whole day. Therefore, this form was completed improperly and appellant's supervisor's allegations have a basis in fact. There is no evidence in the case record that the supervisor's allegations of appellant falsifying an official document and delaying express mail were untrue or were harassing in any way. In fact, these allegations were supported by positive evidence in the form of copies of the falsified documents proving falsification and later delivery of the express mail in question and a statement from the recipient regarding being home all day. Appellant alleged that his emotional condition also resulted from his reaction to the investigative interview. However, the Board has explained that investigations are an administrative function of the employing establishment that do not involve an employee's regular or specially assigned duties, and therefore cannot be considered to be factors of employment.¹⁴ The employer has a right to conduct investigations if wrongdoing is suspected and, as appellant has not provided evidence that the employing establishment acted abusively or unreasonably in investigating his falsification of an official document and his untrue claims of attempted delivery on January 2, 2002, no compensable work factor has been demonstrated.¹⁵

As no compensable factor of appellant's employment has been implicated in the development of his emotional condition, he has failed to establish his claim and the related medical evidence need not be considered.¹⁶

¹⁴ See *Patricia A. English*, 49 ECAB 532 (1998).

¹⁵ See *Bernard Snowden*, 49 ECAB 144 (1997).

¹⁶ See *supra* note 5.

The decisions of the Office of Workers' Compensation Programs dated January 2, 2003 and February 13, 2002 are hereby affirmed.

Dated, Washington, DC
June 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member