

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIO H. MENDOZA and U.S. POSTAL SERVICE,
WEST END STATION, Denver, CO

*Docket No. 02-2394; Submitted on the Record;
Issued March 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On May 25, 2001 appellant, then a 44-year-old letter carrier, filed a claim asserting that his chronic depression and acute hypertension resulted from of his federal employment. He stated:

“I was being pressured by four supervisors on how to do my job and I am on limited duty since September 13, 2000 for six hours a day. So on February 12, 2001 I was called in the office by Frank Allen, Station Manager, in which he said that I was too slow and that I did not know how to do my job. In which I felt bad and pain for the harassment in which had a pain attack and left on sick leave.”

On August 2, 2001 Mr. Allen responded:

“On February 12, 2001 Supervisor Jim Hickle discussed the [route] inspection results with [appellant]. He was given an unacceptable performance by not meeting minimum standards and observing time wasting practices. Attached is a copy of the results of the inspection. Immediately after this meeting [appellant] became upset and left work. He has not returned to work as of this date. When [appellant] returns to work, this administrative action will be addressed.

“On May 25, 2001 [appellant] wrote a letter stating that he was pressured by four supervisors to do his job. This station has 1 supervisor and one manager. [Appellant] was not pressured to ‘do his job.’ His route was inspected along with the other 22 carriers in the West End Station. He states that ‘[Mr.] Allen called me into the office and told me I was too slow and did n[o]t know how to do my job.’ I did not talk with [appellant] regarding the results of the inspection. In fact

his immediate supervisor [Mr.] Hickle talked with him concerning the inspection results. I was not aware that [appellant] had left work for that day.”

On August 2, 2001 Mr. Hickle stated:

“On or about February 12, 2001 [appellant] was given an official discussion pertaining to his time wasting practices observed by the inspector during the six day count week, which commenced on February 10, 2001. The discussion was conducted off the workroom floor, in private and in a professional manner.”

On July 10, 2002 the Office of Workers’ Compensation Programs asked appellant to review the employing establishment’s comments and to submit any additional evidence within 30 days. No further evidence was received.

In a decision dated August 15, 2002, the Office denied appellant’s claim on the grounds that he failed to establish that he sustained an injury in the performance of duty. The Office found that appellant’s reaction to the performance appraisal was not compensable.¹

The Board finds that the evidence fails to establish that appellant sustained an emotional condition while in the performance of duty.

Workers’ compensation law does not cover each and every injury or illness that is somehow related to employment.² An employee’s emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,³ neither do disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct;⁴ investigations;⁵ determinations concerning promotions and the work environment;⁶ discussions

¹ In a letter dated September 17, 2002, appellant requested a hearing because the August 15, 2002 decision was incorrect in stating that he had never responded to the Office’s July 10, 2002 correspondence. He attached the comments and additional evidence that he stated he had mailed to the district Office in July 2002. Appellant sent this package of materials to both the Branch of Hearings and Review and to the Board, which docketed the appeal on September 26, 2002. On November 26, 2002 the Branch of Hearings and Review denied an oral hearing. Under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), the Branch of Hearings and Review’s November 26, 2002 decision, issued while the Board had jurisdiction over the case, is null and void.

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁴ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁵ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁶ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

about an SF-171;⁷ reassignment and subsequent denial of requests for transfer;⁸ discussion about the employee's relationship with other supervisors;⁹ or the monitoring of work by a supervisor.¹⁰

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.¹¹ Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.¹²

Appellant attributes his chronic depression and acute hypertension to administrative matters that are not covered by workers' compensation as a general rule. Specifically, he asserts that his supervisors pressured him on how to do his job and on February 12, 2001 he was told that he was too slow and did not know how to do his job. Appellant characterizes this as harassment, but he has submitted no evidence to support that his supervisors erred in discharging their duties or were otherwise abusive or unreasonable in their actions. Without persuasive evidence corroborating that his supervisors did in fact harass him, appellant's mere perception of harassment is insufficient to establish a factual basis for his claim. The review of appellant's work performance and discussion with his supervisor is not a compensable factor as the evidence does not establish error or abuse in these administrative actions.

Because appellant has failed to document error or abuse by his supervisors, his claim is not compensable.

⁷ *Lorna R. Strong*, 45 ECAB 470 (1994).

⁸ *James W. Griffin*, 45 ECAB 774 (1994).

⁹ *Raul Campbell*, 45 ECAB 869 (1994).

¹⁰ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹¹ *Margreat Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 42 ECAB 566 (1991), reaffirming *Thomas D. McEuen*, 41 ECAB 387 (1990).

¹² *Ruthie M. Evans*, 41 ECAB 416 (1990).

The August 15, 2002 decision of the Office of Workers' Compensation Programs is affirmed.¹³

Dated, Washington, DC
March 17, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board therefore has no jurisdiction to review the package of materials appellant submitted on appeal. Appellant has one year from the date of the Board's decision to submit this package to the regional Office with a written request for reconsideration of his claim. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.b(1) (June 2002).