

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BYRON A. JACOB and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 03-90; Submitted on the Record;
Issued March 12, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, 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 May 9, 2001 appellant, then a 49-year-old motor vehicle maintenance supervisor, filed a claim alleging that he developed an emotional condition, causally related to an increased workload, mental and verbal abuse, a hostile work environment and harassment in his working environment. He stopped work on February 20, 2001 and first sought medical care on March 2, 2001. The employing establishment controverted appellant's claim.

Appellant claimed that around August 2000 he began to feel overwhelmed by his job responsibilities as more work was added to his position, that he felt both management and craft employees were harassing him, and that he was being verbally abused, embarrassed and set up for failure. He claimed that his position was one of multiple duties, including all OSHA (Occupational Safety and Health Administration) and environmental issues for seven vehicle maintenance facilities (VMFs) in Louisiana, that he was one of two people to investigate "zero bundles," that he had shop duties and that he had to absorb the duties of people who left.

Appellant claimed that, if he was not doing his job fast enough or if he forgot something he would be verbally abused in front of others, that he was told by his supervisor, Dennis Mitchell, to just "get over it," and that this led to the hostile work environment. He claimed that he was given one-hour suspensions, that, when he complained about record keeping or employee decision making, he was taken out of the job, that he was expected to keep his name on environmental legal documents even though the facility was out of compliance, that he had no control over these issues, that he was told not to wear a tie because his supervisor did not, and that career threats and intimidation were part of his day.

Appellant stated that he attempted to return to work three times but was harassed and verbally and mentally abused, that he was taken out of his job without his knowledge, that he was told his job was whatever his supervisor said it was, that his desk was broken into and taken away, that his file cabinet was broken into and that his radio was taken.

Appellant's supervisor, Mr. Mitchell, provided a June 3, 2001 statement indicating that there was no reason appellant should have felt overwhelmed by his job responsibilities, as he had fewer responsibilities than most of his subordinates at the same level, that he had a tendency to burden himself with duties that were not his responsibilities and that he was not responsible for OSHA and environmental issues for seven VMFs but for only one. He stated that appellant wanted to take extreme disciplinary action against craft employees for minor infractions, so that he told appellant to "get over it." Mr. Mitchell further stated that appellant never mentioned that he was stressed or overworked, that he often came in early and stayed late of his own volition, and that appellant confided that he was having nonwork-related family problems. He stated that appellant's allegations of being verbally and mentally abused, harassed, embarrassed, threatened and intimidated were quite vague and that he knew of only two confrontations between appellant and two subordinates, Manuel Lopez and Theresa Hughes, who both provided statements. Mr. Mitchell further stated that appellant had a history of medical problems including insomnia, migraines, hypertension and stomach problems, and that his nightmares stemmed from his father shooting and killing his brother and subsequently being imprisoned. He concluded that appellant was trying to blame all of his problems on the employing establishment when it was not true.

Mr. Lopez provided a May 31, 2001 statement in which he noted that appellant told him to use Picks for Paint instead of their regular paint distributor for 12 years, Mike & Jerry's, because Picks for Paint was the only vendor to come out. He noted that, when he called Mike & Jerry's to find out why they did not come out, Mike stated that, when the representative called appellant to find out when to come out, appellant stated that he could not meet with him, and when appellant could meet with the representative, the representative was out of town. Mr. Lopez stated that appellant then decided to give all the paint and body shop supply business to Picks for Paint, which meant that the bodymen would have to learn how to use PPG products instead of DuPont, with which they were experienced, and that they were concerned. He stated that appellant was good friends with the owner of Picks for Paint. Mr. Mitchell then instructed Mr. Lopez to take over the paint booth and when two bodymen met with Mr. Mitchell about the change in paint, Mr. Mitchell decided to stay with Mike & Jerry's. Mr. Lopez then indicated that he got the paint booth operational in two days and that appellant was irritable and sarcastic and told him that he had to track volatile organic hydrocarbons (VOCs), to which, when he asked how, appellant replied "find out how." Mr. Lopez stated that he told appellant that, since appellant had the environmental training, he should track them. Mr. Mitchell then instructed Mr. Lopez to call DuPont to find out how to track VOCs and when he did, he was advised that in Louisiana one was not required to track them. The employing establishment environmental coordinator confirmed this.

Ms. Hughes provided a June 1, 2001 statement in which she noted that she was detailed to the VMF to learn about the environmental coordinator's position, that when she reported to appellant, he was not happy to see her and stated that Mr. Mitchell was trying to take away the part of his job he enjoyed most and that, therefore, he did not appreciate her being there. She responded that she was just doing what she was told and not to take out his anger on her. Ms. Hughes indicated that appellant told her that the environmental portion of the VMF was very technical and that she could not learn it quickly, that he gave her about 20 manuals and handbooks and told her to start reading, and took her on a short tour through the VMF pointing out problem areas. She stated that she was only able to talk with him for about one hour with little progress on specific items she would need to know, and then he left the VMF and she did not see or talk to him since.

Appellant submitted a May 4, 2001 report from Dr. Maria Carmen Palazzo, a Board-certified psychiatrist, who noted that she treated appellant on March 14, 2001 for almost debilitating depression and anxiety, which included insomnia, difficulty concentrating, constant worrying, irritable bowel syndrome, panic attacks, chest pain, extreme sadness, feelings of helplessness and hopelessness, nightmares and emotional lability. Dr. Palazzo stated that appellant claimed that Mr. Mitchell was very harassing, intimidating and moody, and had threatened his job and forced him to turn in his beeper, computer, pad lock and personal things. She stated that appellant claimed that he had a nervous breakdown when Mr. Mitchell threatened his job on February 20, 2001 and she discussed his physical problems and symptoms. Dr. Palazzo stated that appellant perceived the situation as out of his control and likewise believed he was out of control, that this feeling produced an intense level of fear for him, to the point he was unable to function on a daily basis and might eventually require hospitalization. Dr. Palazzo diagnosed adjustment disorder with mixed emotional features (depression and anxiety) and severe stressors due to work. She opined that appellant's symptoms were a direct result of his perception of being in a hostile work environment, and that he consistently verbalized that his source of distress was solely a result of the intimidation from his immediate supervisor. Dr. Palazzo further noted that appellant's perception of self was being demeaned to the point of identify diffusion which he could only attribute to his work environment. Thereafter, Dr. Palazzo noted appellant's diagnosis as generalized anxiety disorder.

By letter dated June 20, 2001, the Office of Workers' Compensation Programs requested further information about implicated employment factors.

Appellant provided several statements detailing multiple alleged events and incidents which supposedly occurred during his employment dating back as far as 1996. He claimed that he had trouble with an employee, Mr. Edmonson, from another shift holding over who cursed at him, that someone had gone through his desk drawers, that his telephone line had been severed and his radio stolen, that he was verbally attacked by Mr. Edmonson who refused to turn his radio down, and four other radio-related incidents and problems, all in 1996. Appellant reported multiple personnel staffing changes, allegedly due to stress. Appellant also stated that he had multiple duties, dealt with multiple service-related issues and had to make frequent trips to Shreveport, Lake Charles, Lafayette, Alexandria and Baton Rouge.

Appellant provided his version of the interaction with Mr. Lopez about the spray booth, and he provided an account of a trip to Baton Rouge with Mr. Mitchell during which he slammed the rear hatch of the Cherokee, after which Mr. Mitchell supposedly told him that he had cut off his nose to spite his face, that he was taking him back to New Orleans, and that he was being put back in the position of supervisor of vehicle supplies. Mr. Mitchell also warned him to stay away from Mr. Lopez or he would be held accountable.

Appellant also stated that he would like to apologize if he had given the impression that the primary reason for his current condition was that he had been given additional job assignments. He stated that that may have contributed to his condition, but by far the greatest factor leading to his current condition was the way in which he was treated in an abusive manner by managers, especially Mr. Mitchell and by certain craft employees, such as Mr. Lopez and Mr. Edmonson. Appellant claimed that, when he was threatened by Mr. Edmonson in 1996, nothing was done, and that he was forced to work in a hostile work environment. He claimed that, because of past continual abuse, harassment, intimidation and the incidents occurring on February 20, 2001, (the date he supposedly received more verbal abuse with intimidation and a

career threat, got very sick and had to go home) which involved Mr. Mitchell and Mr. Lopez, something happened to him and broke his spirit, with the result that his life would never be the same. Appellant claimed that Mr. Mitchell told him to “get over it” when he wanted to file harassment charges against Mr. Lopez, and that Mr. Mitchell allowed Mr. Lopez to verbally abuse him, but told him to leave Mr. Lopez alone. He claimed that Mr. Lopez had been verbally abusive to him since he put a stop to doing business with a girl’s company which was not licensed to transport waste tires in Louisiana, but in Mississippi where it was domiciled, and when he blew the whistle on a company Mr. Lopez was dealing with that exposed facility employees to a chemical that was not supposed to be vaporized and inhaled. Appellant claimed that Mr. Mitchell solicited a statement from Mr. Lopez in an attempt to discredit him relating to the events of February 20, 2001 regarding being friends with the owners of a vendor appellant was attempting to set up an account with to replace a vendor Mr. Lopez was dealing with who was not giving the employing establishment technical support and training, as the new vendor promised they would. He also claimed that the new vendor had overall cheaper prices, that Mr. Lopez threatened that he would “get those m_____ f_____s” upstairs, one of whom was appellant, and that therefore Mr. Lopez’s statement was a threat against him that was fulfilled. Appellant claimed that Mr. Mitchell put Mr. Lopez in appellant’s position as supervisor of vehicle supplies and told him that his job was whatever he said it was, that, when he complained that hazardous waste manifests were not being properly filed, Mr. Mitchell got mad and instructed him to stop doing environmental work. He stated that he attempted to file harassment charges against Mr. Mitchell but was told that they would not stick. Appellant alleged that Mr. Mitchell had literally run many employees out of their facility.

By decision dated August 6, 2001, the Office denied appellant’s claim finding that he had not established a factual basis for the claim by supporting his allegations with probative and reliable evidence. The Office found that, although appellant alleged increased workload, his supervisor noted that he had fewer responsibilities than most subordinates, and that he tended to burden himself with responsibilities other than his own. The Office found that appellant did not have all of the duties he stated, according to his supervisor. The Office found that when appellant wanted to take extreme actions against subordinates whom he felt were abusing him and causing minor infractions he was told to “just get over it” by his supervisor. The Office found that appellant provided no substantiating evidence which corroborated his allegations of abuse or harassment by subordinates or superiors.

By letter dated August 17, 2001, appellant requested an oral hearing before an Office hearing representative. A hearing was held on April 23, 2002 at which appellant testified. In support of his testimony, appellant submitted multiple travel vouchers for travel to a variety of cities on official business. He also submitted a letter from a coworker, Charles Turner, who discussed Mr. Lopez’s anger management problems and his dislike for appellant and Mr. Mitchell and provided another statement reiterating his allegations and explaining his perception of being in a vulnerable position. A report from a licensed clinical social worker treating appellant was also provided.

By decision dated July 12, 2002, the hearing representative affirmed the Office’s August 6, 2001 decision finding that he had failed to establish that he developed an emotional condition, causally related to compensable factors of his employment. The hearing representative reviewed all of appellant’s allegations of harassment, intimidation, abusive treatment, mental and verbal abuse, and a hostile work environment, and found that none of these allegations were supported by corroborating evidence, such that they could be established as

having occurred as alleged. The hearing representative further found that several of appellant's implicated factors were administrative functions of the employing establishment and not part of his regular or specially assigned duties, such that, absent evidence of error or abuse, they were not compensable. The hearing representative found, however, that appellant had submitted sufficient evidence to establish that he had additional duties and an increased workload, particularly when personnel left, and determined that this overwork, additional duties and increased workload constituted a compensable factor of appellant's employment. However, the hearing representative found that the medical evidence of record did not support that the one compensable factor of employment alleged by appellant, that of overwork, additional duties and increased workload, was the cause of his disabling emotional condition, as the medical evidence related the development of appellant's condition to a hostile work environment, a nonestablished factor. The hearing representative found that Dr. Palazzo did not relate the development of appellant's emotional condition to any of the additional duties he performed, and, in fact, noted that appellant was very happy with his environmental duties. She noted that appellant's condition was a consequence of his perception of a hostile work environment.

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

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

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

³ *Id.*

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 specially 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 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 multiple incidents of harassment, intimidation, mental and verbal abuse, and a hostile working environment. The Board has held that actions of an employee's supervisor or coworker which the employee

⁴ *Donna Faye Cardwell*, *supra* note 2; *see also Lillian Cutler*, 28 ECAB 125 (1976).

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 *Supra* note 4.

characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹¹ 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.¹² The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence to corroborate that any of his harassment, intimidation, mental and verbal abuse, and a hostile working environment allegations occurred as alleged. 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 corroborative evidence and have been refuted by statements from appellant's employer and his coworkers. 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 certain administrative and personnel actions taken by Mr. Mitchell constituted career threats and intimidation. These included appellant being given short suspensions on certain jobs, having his attire criticized, being taken off certain jobs and given other jobs and having his duties changed, having his desk and office moved and his files and desk opened, being assigned to train new employees on some of his duties, being criticized for attempting to take excessive punitive action against subordinates for minor infractions, and being told to leave certain employees alone. The Board held in *Thomas D. McEuen*¹³ that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹⁴ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. Appellant has presented no evidence of administrative supervisory error or abuse in the performance of any of these administrative or personnel-related actions, and therefore they are not compensable now under the Act.

Lastly, appellant alleged that more work was added to his position as people left, that he had additional duties and an increased workload, and that this overwork, additional duties and increased workload contributed to the development of his emotional condition. As the evidence of record tended to support that appellant had multiple duties and traveled widely in his job, this increased workload was found to constitute a compensable factor of appellant's employment. However, appellant's burden of proof to establish his claim is not discharged merely by the fact that he has implicated a compensable employment factor which may give rise to a compensable disability under the Act.¹⁵ Appellant must also provide rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his

¹¹ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹² *Ruthie M. Evans*, *supra* note 8.

¹³ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁴ *See Richard J. Dube*, 42 ECAB 916 (1991).

¹⁵ *Ronald C. Hand*, 49 ECAB 113 (1997); *Michael Ewanichak*, 48 ECAB 364 (1997).

emotional condition. In this case, the hearing representative properly found that the medical evidence of record did not support that this one compensable factor of employment implicated by appellant, that of overwork, additional duties and increased workload, was the cause of his disabling emotional condition, as the medical evidence related the development of appellant's condition to a hostile work environment, a nonestablished factor. The hearing representative found that Dr. Palazzo did not relate the development of appellant's emotional condition to any of the travel, overwork or additional duties he performed and, in fact, noted that appellant was very happy with his environmental duties. The Board notes that Dr. Palazzo indicated that appellant's condition was a consequence of his perception of a hostile work environment, which has not been established as existing as alleged. Since the medical evidence of record relates the development of appellant's emotional condition to his perception of a hostile work environment and its components, *i.e.*, harassment, intimidation, verbal and mental abuse, it does not now support that appellant developed an emotional condition causally related to the one compensable factor of employment he implicated, namely overwork, additional duties and increased workload.

As appellant has not submitted evidence sufficient to establish that he developed an emotional condition, causally related to compensable factors of his federal employment, he has not met his burden of proof to establish his claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 12, 2002 is hereby affirmed.

Dated, Washington, DC
March 12, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member