

**United States Department of Labor
Employees' Compensation Appeals Board**

JOHN A. ANISOWICZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Flushing, NY, Employer**

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**Docket No. 03-2193
Issued: April 7, 2004**

Appearances:
John A. Anisowicz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 28, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 13, 2003, which found that appellant had failed to establish that he sustained an emotional condition causally related to compensable factors of his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal 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.

FACTUAL HISTORY

On November 1, 2002 appellant, then a 50-year-old customer service analyst, filed a claim for an emotional condition, which he alleged developed due to factors of his employment.¹ Appellant claimed that he developed “stress” related to being physically assaulted by his superior, Dennis Finneran, being struck on his right knee, having obscenities used against him, being threatened by Frank Inguanta and working overtime without receiving compensation. Appellant stopped work on November 1, 2002 took sick leave and did not return.

By letter dated November 1, 2002, appellant’s supervisor, Mr. Finneran, noted that on that date he counseled appellant on attendance and performance as a route examiner and he indicated that appellant became visibly agitated and claimed that various ailments (knee, back and prostate) and his age (50 going on 51) prevented him from performing his present assignment. Mr. Finneran noted that appellant stated that he was stressed out and was leaving.

The employing establishment controverted appellant’s claim noting that Mr. Finneran denied any allegations of assault.

By letter dated November 26, 2002, the Office requested that appellant submit a statement of all employment factors he implicated in causing his condition with specifics, describe the progression of his illness and provide any witness statements he had with the results of any grievance resolutions.

In response dated December 3, 2002, appellant restated his allegations of being threatened, yelled at and cursed by Mr. Finneran and he claimed that Dave Ewen pointed his finger in his face as if he were going to punch him while he was yelling and cursing at him. Appellant claimed that he was constantly being treated as if he were the junior man. Appellant claimed that he was not getting paid for certain overtime he worked, that Mr. Ewen threatened him at other times, that Mr. Finneran threw away his suggestion form, that he was blamed for being late in October 2002, that he was criticized and called names by his coworkers and his supervisors and that he was called a half-terrorist for being half Lebanese. Appellant also alleged that, in May 2001, Mr. Finneran called him into his cubicle to discuss something and became abusive and punched him on his right knee and pushed him on his left shoulder while cursing at him. Appellant claimed that he was asked to bid out of a unit, that he was criticized for having turned off his answering machine at home when he did not get a message and that, in December 2000, he was written up for sexual harassment when three female employees complained about him saying something inappropriate. Appellant further alleged that Mr. Inguanta threatened to have him fired because managers at stations were afraid of him, that he would find errors and after pointing them out he would be banned from the premises and that he did not have a computer and everyone else was getting mad at him for using theirs. Appellant alleged that he was constantly being abused and that he used his personal vehicle for work purposes and was not reimbursed for mileage.

¹ Appellant initially filed a Form CA-1 for traumatic injury but his claim was developed as an occupational injury since it was alleged to have occurred over more than one shift.

In a December 12, 2002 response to appellant's allegations, Mr. Ewen denied that, during his November 1, 2002 discussion of performance and attendance, he cursed him, pointed at him, or clenched his fist at him, or that he addressed him in any way other than a businesslike manner. Mr. Ewen denied appellant's other similar allegations and he claimed that during a review appellant became loud and boisterous and was abusive to a window clerk, but that in counseling him he was businesslike and professional.

In an attached response from Mr. Finneran, he denied that he ever called appellant any derogatory names and Mr. Finneran stated that all discussions were professional and businesslike and that all employees who utilize their cars for approved business are compensated according to the guidelines.

In a December 12, 2002 response to a canceled fitness-for-duty examination, appellant argued that he was out of work due to severe stress and that mistakes like this only caused him to become more stressed, making it harder for him to recover and causing him further anguish and grief. Appellant opined that the employing establishment was trying to entrap or deceive him by intentionally trying to confuse him.

By letter dated December 16, 2002, appellant reiterated and expanded upon his previous allegations, he alleged that he was blamed for shutting off a computer, that he was never compensated for six hours and that, regarding the sexual harassment allegations, although he may have stated some things that were inappropriate, the carriers lied and made it sound worse than it was. Appellant provided a lot of reasons for his time management failures and his premises restrictions and he claimed that he did not get a new beeper when requested.

On December 17, 2002 the Office received some December 12, 2000 remarks, in which appellant claimed that there was a conspiracy regarding the alleged sexual harassment charges because several routes were not functioning according to the edit sheet, that he was told that all he should be doing was checking the possible deliveries, that four routes had more overtime than actually needed and that the incident where the car tried to hit him may have been a set up to get him out of the station.

In a December 20, 2002 statement, appellant noted that a coworker was supposed to be his backup, but instead of backing him up on a carrier mail count when he was not able to get there, the coworker complained about appellant's lateness to Mr. Finneran.

By statement dated January 31, 2003, Mr. Finneran noted that, in answer to appellant's accusations, he had not assaulted appellant on May 31, 2001 or at any other time.

By decision dated February 13, 2003, the Office rejected appellant's claim finding that he had failed to establish that he sustained any emotional condition causally related to compensable factors of his employment. The Office found that the implicated employment factors were either noncompensable or unproven and without corroboration of witness statements or employing establishment findings and were denied by the persons involved. The Office found that appellant had not provided any evidence of administrative error or abuse related to his allegations.

LEGAL PRECEDENT

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.²

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.³ 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.⁴

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.⁵ 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.⁶ 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.⁷ Noncompensable factors of employment

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Id.*

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *Donna Faye Cardwell*, *supra* note 3; *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Id.*

include administrative and personnel actions, which are matters not considered to be “in the performance of duty.”⁸

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.⁹ 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.¹⁰ 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.¹¹ 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.¹²

The Board has commented that verbal altercations, name calling or difficult relationships with supervisors or coworkers may be compensable if there is objective factual evidence supporting such allegations of mistreatment in relationships at work or of conduct or language, which is otherwise unusual or not encountered as a norm of the employment.¹³

Further, actions of an employee’s supervisor, which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹⁴ 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.¹⁵ Moreover, the Board has held that physical contact by a supervisor or by a coworker, if substantiated by the evidence of record, may give rise to a compensable factor under the Act if the medical evidence establishes that a condition was thereby caused or aggravated.¹⁶

⁸ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁹ See *Barbara Bush*, 38 ECAB 710 (1987).

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹¹ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹² See *Donna Faye Cardwell*, *supra* note 6; see also *Lillian Cutler*, *supra* note 6.

¹³ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹⁴ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁶ *Karen E. Humphrey*, 44 ECAB 908 (1993); *Alton L. White*, 42 ECAB 666 (1991); *Constance G. Patterson*, 41 ECAB 206 (1989).

In *Thomas D. McEuen*,¹⁷ the Board held 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.¹⁸ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.¹⁹ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

ANALYSIS

In this case, appellant has not alleged 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, in large part, that his condition was caused by supervisory and coworker harassment. Appellant has alleged that he had difficult relationships with multiple supervisors and coworkers, that he was frequently subjected to verbal abuse, insults and harassment and that he was assaulted by two different superiors; however, he has not provided any witnesses to corroborate these allegations, nor has he provided any findings from the employing establishment in relation to these allegations. The employing establishment and implicated superiors have denied all of these allegations, noting that no contact between superior and appellant had occurred at any time in any manner and that all discussions and counseling were conducted in a professional manner without insults, verbal abuse or name-calling. Further, the supervisors noted that they knew of no coworker name-calling regarding appellant and that they would have stopped it immediately if found and appellant did not provide any supporting evidence or witness statements that these instances of harassment occurred as alleged. The Board, therefore, finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of his allegations. 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.

Several of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. As noted above, the Board held 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 do not bear a direct relation to the work required of the employee, unless the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment

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

¹⁸ *See Richard J. Dube*, 42 ECAB 916 (1991).

¹⁹ *James E. Norris*, 52 ECAB 93 (2000).

superiors in dealing with the claimant.²⁰ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.²¹ The incidents and allegations made by appellant, which fall into this category of administrative or personnel actions include: (1) appellant not receiving payment of a travel voucher he submitted;²² (2) appellant not receiving payment for overtime hours worked;²³ (3) appellant being subjected to counseling sessions;²⁴ (4) being asked to bid out of a unit;²⁵ (5) leave usage and sick leave matters;²⁶ and (6) not having his own computer.²⁷

In this case, appellant's supervisors indicated that he was not entitled to payment of a travel voucher or to payment for overtime hours worked by regulation, due to his grade and step and his employment category. Therefore, this is not administrative error or abuse. The employing establishment admitted that appellant had undergone counseling sessions but denied that he was yelled at, cursed, or touched in any way, or that he was physically threatened and called names. As these allegations were not supported by factual evidence or by witnesses and were denied by the supervisors involved, they have not been established as occurring as alleged. Appellant alleged that he was asked to bid out of a unit, but he presented no evidence that this was abusive and not merely an administrative instruction, as employees routinely bid in and out of positions. Additionally, this allegation deals with appellant's desire to work in a particular environment, which is not a compensable factor of employment.²⁸ The usage of leave is purely an administrative matter unrelated to a claimant's regular or specially assigned duties and the record contains no evidence that appellant was required to use or not to use leave inappropriately or as punishment for some indiscretion. Therefore, no administrative error or abuse was demonstrated with appellant's leave restrictions. Appellant also alleged that he was harassed and abused because he did not have his own computer. This is an employing establishment supply and equipment problem and in this case the employing establishment determined that appellant could perform his job successfully without having his own computer. Appellant has, therefore, failed to establish that the employing establishment committed administrative error or abuse in any of these allegations and the employing establishment's explanations illustrate that it acted reasonably in dealing with these administrative problems as they arose.

²⁰ See *Richard J. Dube*, 42 ECAB 916 (1991).

²¹ *James E. Norris*, 52 ECAB 93 (2000).

²² See *Frederick D. Richardson*, 45 ECAB 454 (1994).

²³ *Id.*

²⁴ *Id.*

²⁵ See *Ernest St. Pierre*, 51 ECAB 623 (2000).

²⁶ *John Polito*, 50 ECAB 347 (1999).

²⁷ See generally *Brian H. Derrick*, 51 ECAB 417 (2000).

²⁸ See *Donald W. Bottles*, 40 ECAB 349 (1988).

From the facts of this case cited above and from the employing establishment's explanations, the Board has determined that the employing establishment acted reasonably in dealing with these problems, such that no administrative error or abuse was demonstrated or occurred in any manner. Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

CONCLUSION

Under the circumstances described above, the Board finds that appellant has not established that he sustained an emotional condition in the performance of duty, causally related to any compensable factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 13, 2003 is affirmed.

Issued: April 7, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member