

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

ROBERT LAWLOR, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 04-778
Issued: April 22, 2004**

Appearances
Robert Lawlor, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 30, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 8, 2003 decision denying his emotional condition. 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 is whether appellant sustained an emotional condition in the performance of his federal duties.

FACTUAL HISTORY

On June 10, 2002 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that he sustained an emotional condition as a result of harassment and ineptitude by his supervisors. He stated that on February 27, 2002 he experienced major anxiety, severe depression, insomnia, nightmares and phobia after his supervisors required him to deliver mail outside his medical restrictions. Appellant was working light duty at the time of

the alleged incident due to an accepted back and arm condition. His medical restrictions were no lifting, pushing or pulling more than five pounds. Appellant was allowed to case mail and work six days a week and eight hours a day.

In an undated statement received by the Office on June 20, 2002, appellant alleged that on February 27, 2002 his supervisors, Thomas Alessandro and Manny Rivera, instructed him to deliver mail in a residential building that resulted in a recurrence of back and hand pain. He stated that Mr. Alessandro told him that casing mail in the employing establishment and delivering mail in a residential building was the same thing. Appellant noted that he had not delivered mail in two years and that management's decision to use semantics in interpreting his medical restrictions was egregious and the first of a sequence of events that caused him to experience his emotional condition.

On March 1, 2002 appellant went to the employing establishment to file a recurrence of disability claim. When he approached Mr. Alessandro with the forms, the supervisor repeatedly asked appellant if there was a new incident. Appellant then asked to have a shop steward present to continue the conversation. Mr. Alessandro then ordered him to leave the building until a steward was available. Appellant waited outside in the cold, which he stated caused him to feel mental pain and anguish along with physical pain due to his injuries, as he did not know what to do with his recurrence forms. He added that he was being treated unfair because he was an injured worker. When shop steward Vito Tantillo arrived, they approached Mr. Alessandro together but appellant was again instructed to leave the building. Appellant was later told by Mr. Tantillo that his supervisors might file charges against him. This caused a feeling of hopelessness and helplessness because management had purposely sent him to an ergonomically subpar building and blamed him for being injured. Appellant stated that on March 4, 2002 he presented his recurrence forms to the workers' compensation office, but the forms were not accepted without the supervisor's completed section. He then found a union steward, Jerry Williams, who helped him submit the form to Mr. Alessandro. On March 7, 2002 appellant learned that Mr. Alessandro had not submitted the forms for processing. He noted that on March 8, 2002 the forms were accepted but the delays in due process, the humiliation in the methods used to undermine his efforts and the nonconcern for his well being as a 30-year employee and ineptitude in the process of his claim caused his physical and mental health to deteriorate and worsen resulting in stress and anxiety.

The record contains a February 27, 2002 note written by appellant, to a Mr. Boyle, that said that he was instructed by his supervisor to deliver mail in a residential building until the regular mail man arrived. After 40 minutes he began to feel pain in his neck and arms and stopped. The file also contains a March 1, 2002 note from Dr. Raymond Kurzner, an orthopedist, who stated that appellant was totally disabled and diagnosed carpa-metacarpal and lumbosacral and cervical sprain.

In an undated statement received June 20, 2002, appellant's spouse, Diane Lawlor, stated that his mental and physical health had deteriorated to the point where the quality of life in their family and marriage had diminished due to the employing establishment's management team sending appellant to deliver mail on February 27, 2002.

In a June 18, 2002 statement, Mr. Alessandro noted that on February 27, 2002 he sent appellant to deliver mail at a residential building and instructed him to work within his medical restrictions. He stated that appellant returned a short time later complaining of neck, back and arm pain because he had pounded mail into filled mail boxes. According to Mr. Alessandro appellant answered “yes” when he asked him if he knew that the proper procedure when he encountered a filled mailbox was to leave a note regarding the boxes and retain the mail. Appellant then became loud, walked away and refused to come back. At that point, Mr. Alessandro stated that he asked appellant to leave the building.

Mr. Alessandro asked appellant if he understood his medical restrictions before he left to deliver the mail and that appellant was not to exceed them. He stated that appellant did not understand how paperwork was processed and that was why he became upset with the procedures. When appellant brought the recurrence forms to Mr. Alessandro, he asked questions but appellant stated that he did not have to answer them. Due to his disrespectful tone, he asked appellant to leave the building. Mr. Alessandro opined that appellant brought on this pain and suffering himself by ignoring his restrictions and not following rules and regulations.

In a June 24, 2002 letter, union steward Mr. Tantillo, stated that on March 1, 2002 appellant approached him and appeared to be in distress due to his failed attempts to submit his recurrence forms and being asked to leave the building. Mr. Tantillo stated that he went with appellant to see Mr. Alessandro, who said he would get back to them later and again told appellant to leave the building. Mr. Tantillo recommended that appellant get home safely and calm down. He stated that Mr. Alessandro later told him that he asked appellant to leave the building because he feared that appellant might hurt himself and that disciplinary action would likely follow.

In a July 11, 2002 letter, the Office asked appellant for more information. In a July 22, 2002 letter appellant stated that it took four months to file the claim because he was in mental and physical pain due to harassment and mistreatment at the employing establishment. In a July 17, 2002 report, Olivia Miller, a licensed clinical social worker, stated that she treated appellant for panic attacks, insomnia, intense irritability and outbursts of anger, inability to concentrate and homicidal rage. She attributed his condition to “how he was treated by the [employing establishment].” Ms. Miller stated that appellant was fixated on how he was humiliated at work. She diagnosed post-traumatic stress syndrome and paranoid personality disorder.

In a July 29, 2002 report, Dr. Shalom Feinberg, a Board-certified psychiatrist, stated that he treated appellant on May 3, 2002 for anxiety and depression related to reinjuring his neck and subsequent stressful interactions he had with his supervisors. He diagnosed a major depressive disorder, anxiety disorder and personality disorder. In a July 31, 2002 report, Dr. Raymond Kurzner, an orthopedist and appellant’s treating physician, diagnosed cervical sprain, lumbosacral sprain and right sacroiliac sprain.

In a September 16, 2002 decision, the Office denied appellant’s claim finding that he did not establish any compensable employment factors.

In an August 13, 2003 letter, appellant requested reconsideration and submitted an April 7, 2003 report from Dr. Feinberg, who repeated his July 31, 2002 report and diagnosis and stated that appellant was totally and permanently disabled. Other new evidence included a magazine cover showing a worker casing mail, two sets of letters from the employing establishment; one set approving and one denying his request for disability retirement and a set canceling and reinstating his health and life insurance. Appellant stated that these letters showed that the employing establishment did not work together; a fact that he stated aggravated him. He also submitted a copy of a complaint he filed with the Office Federal Contract Compliance and the Merit Systems Protection Board that alleged discrimination, harassment and intimidation due to his job assignments and the failure to process forms in a timely fashion. Appellant indicated that no action resulted from these filings.

In a December 8, 2003 decision, the Office denied modification of the September 16, 2002 decision, finding appellant failed to allege that his condition arose from factors in the performance of his employment duty.

LEGAL PRECEDENT

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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated December 8, 2003, the Office denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, such as asking him to leave the building and improperly assigned work duties, such as delivering mail, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷ Although the handling of disciplinary actions and the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁸ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Mr. Alessandro stated that he asked appellant to leave the building after he became loud and refused to cooperate; a statement supported by Mr. Tantillo. Thus, he has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of his supervisors contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁸ *Id.*

⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

could constitute employment factors.¹⁰ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹¹ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹² Appellant alleged that his supervisor, Mr. Alessandro made statements and engaged in actions which he believed constituted harassment and discrimination, such as mishandling his paperwork and treating him unfairly, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹³ Mr. Tantillo's statement supports that appellant had trouble getting his forms accepted and that he had a disagreement with his supervisor, but it does not establish error or abuse by management. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant also alleged that his supervisor used poor judgment in assigning him to deliver mail and was inept in processing forms. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁴ The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated, in that it resulted from his frustration in not being permitted to work in a particular environment or to hold a particular position.¹⁵

The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.¹⁶ The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.¹⁷ However, in the present case, appellant did not allege that his emotional condition was caused by pain or overwork, but by how his supervisors treated him as represented by the fact that they asked him to deliver mail.¹⁸

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹³ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁴ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁵ *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

¹⁶ See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

¹⁷ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

¹⁸ The Board notes appellant has filed an appeal with the Board regarding a recurrence of accepted physical injuries.

Regarding appellant's allegations that the employing establishment mishandled his compensation claims, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.¹⁹

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.²⁰

CONCLUSION

Appellant has not established that he sustained an emotional condition in the performance of his federal duties.

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2003 decision by the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁹ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

²⁰ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).