

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

CARL W. BOSCH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, MO, Employer**

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**Docket No. 04-1046
Issued: November 23, 2004**

Appearances:
Carl W. Bosch, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 20, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated August 15, 2003 which denied his emotional condition claim. Under 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 established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On May 10, 2002 appellant, then a 46-year-old driver instructor and examiner, filed a claim for an emotional condition. He asserted that his supervisor, Rosemary Goldblatt, had sexually harassed him and that he worked in a hostile and abusive work environment. Appellant asserted that he was first aware of his condition on November 5, 1999 and that his condition was caused or aggravated by his employment on April 29, 2002. Appellant's physician took

appellant off work on a permanent basis on July 10, 2002 and he retired on disability due to his depression and anxiety. Appellant submitted medical evidence which consisted of records of psychiatric treatment dating back to 1999, but did not enclose a statement. The record reflects that appellant has a previous claim for an emotional condition under file number 110177425.¹

By letter dated May 21, 2002, the Office advised appellant that he needed to submit additional factual and medical information in support of his claim.

On July 19, 2002 appellant submitted numerous documents which pertained to union grievances, his disability retirement application and disciplinary actions which were taken against him.² The basis of appellant's claim is contained within these documents. Appellant attributed his condition to the following incidents: that Ms. Goldblatt treated him unequally from other employees as she had allowed a fellow coworker, John Phalen, to use the postal vehicle to pick up lunch from a restaurant on May 9, 2002 but he was not allowed to use a postal vehicle for personal business; that on May 9, 2002 he was required to watch videos which all craft employees had been instructed to watch and when he viewed a videotape of a troubled employee named "Carl," he felt intimidated and threatened by viewing this film; on May 15, 2002 Ms. Goldblatt took away his job responsibilities by preventing him from communicating with the manager of motor vehicles to schedule trainers and by preventing him from giving safety talks to city carriers at the stations and branches. Appellant also asserted that Ms. Goldblatt had punished him by giving him accident reports which were a month old and that she expected him to give driver improvement training to those people who had had accidents; Ms. Goldblatt had allowed the training technicians to perform all powered industrial training, including the three-year evaluation; Ms. Goldblatt contacted Ron Todd, a human resource specialist, and told Mr. Todd that he (appellant) had wanted to receive a package for disability retirement; he was harassed when the employing establishment had sent him for a fitness-for-duty appointment while he was absent from work on Family Medical Leave Act (FMLA) for depression and he was not notified of the cancellation of the appointment prior to showing up for the appointment; on February 14, 2002 Ms. Goldblatt was demanding and threatening in asking him to reword a paper which the station manager had found confusing to understand with regard to the certification of employees to drive a postal vehicle called a "Flexible Fuel Vehicle."

In an August 6, 2002 letter, Ms. Goldblatt, human resources specialist, training, controverted appellant's claim and addressed his allegations. She denied that Mr. Phalen was allowed to use a postal vehicle for personal business. She stated that Mr. Phalen had been specifically told that he must use his own car to pick up the lunch from the restaurant on May 9, 2002. With regard to the May 9, 2002 video incident, Ms. Goldblatt stated that employees had to have a total of eight hours of training and indicated that, on May 9, 2002, she had told appellant to watch the required videos that craft employees had been instructed to watch. After appellant had seen the required videos, he still had remaining training hours to

¹ Under file number 110177425, in a decision dated May 5, 2000, the Office denied appellant's claim and, in an August 4, 2000 decision, denied his request for a hearing as untimely.

² The Office also received numerous amounts of material pertaining to appellant's previous emotional condition claim under file number 110177425. The Office, however, adjudicated only the issues and events which had occurred since the prior denial. Appellant was specifically advised to pursue his appeal rights if he disagreed with the decisions issued under file number 110177425.

complete. Ms. Goldblatt indicated that appellant was in a room about 40 feet away from her when he waved at her with a video in his hand and asked her whether he could see the video to complete his training hours. She stated that she did not select the tape for appellant and she had not paid any attention to what particular tape he had selected, but believed that whatever tape it was that he selected was suitable for him to see as any video could be seen by employees of different groups without harm done to any group. She additionally stated that she encouraged all of her employees to view all information intended for the employing establishment in general.

Ms. Goldblatt denied that she had taken away appellant's job responsibilities. She stated that, when appellant had assumed his job, early in 1998, she had allowed him to contact the manager of the motor vehicle department to request trainer assistance. She indicated that the manager of the motor vehicle department contacted her several weeks later to request that only she contact him, or his supervisors, to ask for assistance so that he could verify the information with another manager or supervisor to avoid workflow problems in the motor vehicle department. Ms. Goldblatt indicated that she had explained the reason to appellant when she told him to no longer call the manager of the department to ask for assistance and had told appellant that she would assume the responsibility to request trainer assistance. Ms. Goldblatt further indicated that she had asked appellant, in the spring and summer of 1991, whether he would like to advertise the vehicle rodeo, an annual event which promoted vehicle safety, and to visit as many stations and branches as possible to promote the rodeo and vehicle safety. Ms. Goldblatt stated that appellant had agreed to do this and later requested permission to make regular trips to the offices in the future in order to give vehicle safety talks. Ms. Goldblatt indicated that she had agreed to appellant's request and told him that those trips would be in addition to his regular duties which must be completed first. Ms. Goldblatt stated that appellant did not find additional time to make the office visits after the vehicle rodeo event.

Ms. Goldblatt stated that, although she had given appellant accident information which was more than two weeks old, she never intended nor prevented him from effectively performing his job of giving driver improvement training to the people who had had the accidents. She stated that the reason for the delay in giving appellant accident information was that, when appellant was frequently absent from work, she could not find the help that she needed in her unit to complete the work in a timely manner. She indicated that this included keeping up with the driver improvement training. Ms. Goldblatt denied appellant's allegation that she allowed the training technicians to perform all powered industrial training, including the three-year evaluation. She stated that a portion of the powered industrial equipment training was self-study and that the training technicians were certified to administer that part of the training only.

In response to appellant's allegation that she contacted Mr. Todd, a human resources specialist, personnel, about a disability retirement for appellant, Ms. Goldblatt submitted a copy of a memorandum which conveyed a telephone conversation she had with appellant on June 20, 2002 wherein appellant had asked her to give Mr. Todd a "heads up" by telling him (Mr. Todd) that he (appellant) might be calling him regarding disability retirement. With regard to the canceling of the April 29, 2002 fitness-for-duty appointment, Ms. Goldblatt indicated that appellant was notified by letter dated April 12, 2002 to report for a fitness-for-duty examination on April 29, 2002. She stated that appellant had been absent from work the week prior to the examination date and had filed a grievance on April 23, 2002 stating that he should not be required to go to the examination while he was on FMLA leave. Ms. Goldblatt stated that on

April 24, 2002 her office received a notice from appellant's psychiatrist indicating that appellant had been incapacitated from April 2 through 24, 2002 and that he would be able to return to work on Monday, April 29, 2002. Ms. Goldblatt indicated that she met with appellant's union representative on April 26, 2002 and they settled the grievance by agreeing that appellant did not have to report for the examination if he was absent from work on an FMLA absence. Ms. Goldblatt stated that, on April 29, 2002, appellant called Meredith Johnson, a supervisor, and reported that he would not be at work on that date due to an FMLA protected absence for depression. Ms. Goldblatt stated that appellant did not question Ms. Johnson about the scheduled fitness-for-duty examination when he called in his absence on April 29, 2002. As the employing establishment had accepted appellant's absence from work based on an FMLA protected absence, Ms. Goldblatt indicated that the fitness-for-duty examination scheduled for April 29, 2002, was cancelled. Copies of the settled grievance and documents which recorded the events of April 29, 2002 when appellant reported for the fitness-for-duty examination and found out it was cancelled were attached.

With regard to a February 14, 2002 alleged "conflict" with appellant, Ms. Goldblatt stated that she had requested appellant to follow employing establishment policy for certifying employees to drive flexible fuel vehicles. Ms. Goldblatt indicated that the employing establishment had revised certain aspects of training for that particular vehicle, which was a departure from past practice and with which appellant did not agree. Ms. Goldblatt stated that she had asked him to reword a paper that a station manager had found confusing in spite of his feelings about the rightness or wrongness of the policy. She attached a copy of the mail she had sent to her manager regarding the incident.

By decision dated August 22, 2002, the Office denied appellant's claim for an emotional condition, finding that appellant had not established a compensable factor of employment as there was no evidence of harassment or that the employing establishment had exercised any error or abuse in their administrative capacity.

By letter dated September 20, 2002, appellant requested an oral hearing, which was held on April 22, 2003. No new evidence was provided. By decision dated August 15, 2003, an Office hearing representative affirmed the August 22, 2002 Office decision.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.³

The first issue to be addressed is whether appellant has established a compensable factor of employment that contributed to his emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees'

³ See *Leslie C. Moore*, 52 ECAB 132 (2000).

Compensation Act.⁴ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁵

ANALYSIS

The Board finds that the evidence does not establish that the administrative and personnel actions taken by management in this case constitutes error. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.⁶ However, error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.⁷

Appellant has asserted that he was required to watch a video about a troubled employee named "Carl" and he felt intimidated and threatened by viewing this film. The evidence reflects that all craft employees were required to attend eight hours of training and appellant had voluntarily selected the video, with which he later took issue, in an effort to complete his remaining training hours. Administrative and personnel matters include matters involving the training of employees.⁸ There is no evidence that appellant was required to review that particular tape. Additionally, there is no evidence that his supervisor was aware of what tape appellant had selected, as she specifically asserted that appellant had waved the tape at her from a room approximately 40 feet away. Thus, although appellant viewed the video, there is no evidence that his agency erred or abused its authority in allowing him to view the video.

Appellant has alleged that it was harassment to schedule him for a fitness-for-duty examination when he was absent from work on FMLA and then canceling the appointment without notifying him before he showed up for the appointment. Requiring these examinations is an administrative function of the employer and absent error or abuse, on its part, coverage will not be afforded.⁹ The evidence of record reflects that, once the employing establishment learned that appellant was on an FMLA absence, they settled his grievance by agreeing that he did not have to report for a fitness-for-duty examination if he was absent for work on an FMLA absence. Appellant was scheduled to return to work on April 29, 2002, the day his fitness-for-duty examination was scheduled. On April 29, 2002 appellant reported that he would not be coming

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ See *James E. Norris*, 52 ECAB 93 (2000).

⁶ See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

⁷ *James E. Norris*, *supra* note 5.

⁸ *Id.*

⁹ *Donald E. Ewals*, 45 ECAB 111 (1993).

into work due to an FMLA protected absence for depression. He did not inquire as to whether he needed to attend the fitness-for-duty examination scheduled for that day. Appellant should have been aware that his grievance was settled and that he would not have to report to the scheduled fitness-for-duty examination on April 29, 2002. Thus, the Board finds no such error or abuse in either the employing establishment's scheduling of the fitness-for-duty examination or subsequent cancellation thereof due to his accepted excuse. Appellant has not specified how the cancellation of the fitness-for-duty examination was abusive in nature.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.¹⁰ Appellant has alleged that Ms. Goldblatt took away his job responsibilities by not allowing him to directly communicate with the manager of the motor vehicle department to request trainer assistance. Although appellant was initially allowed to contact the manager of the motor vehicle department directly, the evidence reflects that the manager of the motor vehicle department contacted Ms. Goldblatt and requested limited access as his staff was overtaxed in the motor vehicle department. Matters concerning how departments are run are considered administrative functions of the employer not within the performance of duty unless error or abuse is shown.¹¹ There is no evidence of error or abuse by the agency in authorizing limited access to the motor vehicle manager. Thus, appellant has not established a compensable employment factor.

Appellant asserted that his supervisor prevented him from giving vehicle safety talks. The record indicates that appellant had enjoyed advertising the vehicle rodeo to the offices and had subsequently requested to be allowed to make regular trips to offices in the future to give safety talks. Ms. Goldblatt had agreed but stated that he needed to complete his normal job duties first. A supervisor has the authority to prioritize work assignments. An employee's complaints concerning the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.¹² There is no evidence of any error or abuse.

Appellant has alleged that he was being "punished" when Ms. Goldblatt provided him with accident reports that were over a month old for which he had to provide driver improvement training to the people who had accidents. Ms. Goldblatt explained the matter, noting that her resources were scarce and also that the lateness of the reports was due, in part, to appellant's own absenteeism. Appellant submitted no evidence that he was treated in a punitive manner when the accident reports reached him late. Assignment of work duties are administrative functions of the employer and, in this case, there is no showing of any error or abuse by the employing establishment.¹³

¹⁰ See *George F. Kennedy*, 35 ECAB 1159, 1167 (1992).

¹¹ See *Felix Flecha*, 52 ECAB 268 (2001) (an employee's reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer).

¹² *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹³ See *Janet I. Jones*, 47 ECAB 345, 347 (1996).

Appellant has asserted that Ms. Goldblatt was demanding and threatening in asking him to reword a paper concerning the certification of employees to drive a flexible fuel vehicle. Ms. Goldblatt indicated that the employing establishment had revised certain aspects of training but that appellant did not agree with the changes. She indicated that she had asked him to reword the paper in spite of his feelings about the policy change. Appellant has not attributed his emotional condition to his work duties, but rather to his supervisor's administrative instructions on the work assignment. The Board has found that it is an administrative function of the employer when an appellant's emotional reaction concerns the work assignment which his supervisor gave him in her capacity as a supervisor and which relates to the exercise of supervisory discretion in assigning work.¹⁴ Although appellant may have disagreed with the assignment, there is no affirmative evidence establishing abuse in the supervisor's issuance of such an instruction, which at best would present an uncertain possibility that Ms. Goldblatt may have responded to appellant in a tone or manner which he did not like.

To the extent that appellant has alleged that his allegations constituted harassment by the employing establishment, such allegations are insufficient. In such situations, there must be evidence that implicated acts of harassment did, in fact, occur supported by specific, substantive, reliable and probative evidence.¹⁵ Mere perceptions alone are not compensable. Unsubstantiated allegations of harassment are not determinative of whether such harassment or discrimination occurred.¹⁶

Appellant has not submitted any factual evidence to support his allegations that he was harassed, mistreated or treated in a discriminatory manner by his supervisors. Ms. Goldblatt specifically denied appellant's allegations that fellow coworker, Mr. Phalen, was allowed to use a postal vehicle for personal business. Appellant has not substantiated his allegation that he was treated unequally as he failed to submit supporting evidence that the employing establishment had allowed Mr. Phalen to the use of a postal vehicle for personal business. There is no evidence to support appellant's allegation that Ms. Goldblatt told Mr. Todd that she wanted him to take disability retirement. The Board finds that the allegations were not established as factual as alleged by appellant, as he failed to provide supporting evidence for his allegations. There is also no evidence to support appellant's allegation that training technicians assisting with the powered industrial equipment education was done in any attempt to harass or discriminate against him. The employing establishment stated that training technicians have sometimes administered the portion of the powered industrial equipment training which was self-study as they were certified to do so. No other part of the powered industrial training program were administered by training technicians. Appellant submitted no evidence to support that training technicians assisting with the powered industrial training program was done in an attempt to harass or discriminate against him. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain supervisor at work which do not support his claim for an emotional disability.¹⁷ Likewise, appellant's general allegations

¹⁴ *Rudy Madril*, 45 ECAB 602 (1994).

¹⁵ *See James E. Norris*, *supra* note 5.

¹⁶ *Id.*

¹⁷ *See Curtis Hall*, 45 ECAB 316 (1994); *Kathleen D. Walker*, 42 ECAB 603 (1991).

harassment with regard to the cancellation of the fitness-for-duty examination is also not established in view of the evidence, noted above, regarding that matter.

As appellant has not established any compensable employment factors, it is not necessary for the Board to consider the medical evidence of record.¹⁸

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 15, 2003 is affirmed.

Issued: November 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁸ *Lori A. Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004).