

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

_____)	
HENRY P. STANLEY, Appellant)	
and)	
U.S. DEPARTMENT OF LABOR, MINE)	Docket No. 04-1322
SAFETY & HEALTH ADMINISTRATION,)	Issued: November 29, 2004
Mount Gay, WV, Employer)	
_____)	

Appearances:
Henry P. Stanley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 20, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated January 15, 2004, which denied his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 12, 2002 appellant, then a 47-year-old coal mine safety and health inspector, filed a traumatic injury claim alleging that on December 4, 2002 he developed stress and anxiety after being verbally and physically abused by a supervisor. He stopped working on December 4, 2002 and returned on December 18, 2002. Appellant's supervisor, Bill Gillenwater, noted on the CA-1 form that the yelling incident occurred as alleged.

Appellant submitted a statement indicating that he was a union shop steward and that on December 4, 2002 Danny Woods, a coworker, approached him and requested that he posted a statement on the employing establishment bulletin board. He noted that the posting of this statement was opposed by management. Appellant sought and was granted permission to post the statement from two union representatives. He alleged that after he posted the statement a supervisor, Jake Blevins, entered his office and in a loud, abusive voice stated, "you need to go see Pat Brady," a district manager, before posting the statement and subsequently threw the statement on his desk and pointed his finger and yelled "this doesn't represent the people of this office" and then stated that appellant "... needed to be at Island Fork (Coal Comp) and that I had a man on life support there. That I should be out doing my job, not in the office doing union business."

Appellant submitted a witness statement from George Cavendish who noted that on December 4, 2002 he overheard Mr. Blevins yelling at appellant about performing union business instead of performing his job and that appellant should be at Island Fork inspecting the mine where a worker was injured.

On December 6, 2002 appellant sought treatment from Dr. Alexandru Profiriu, a Board-certified internist, who treated him for anxiety and stress following an altercation with a supervisor. He also noted symptoms of anxiety, tearfulness and diagnosed adjustment disorder with anxiety and depressive features. In reports dated December 9 and 17, 2002, Dr. Glenn A. Harper, a Board-certified family practitioner, noted treating appellant for anxiety and a panic attack, which was attributed to problems with management. He diagnosed anxiety and recommended that appellant stay off work until December 17, 2002.

By letter dated December 23, 2002, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents which he believed had contributed to his claimed illness. The Office also requested a comprehensive medical report from appellant's treating physician, which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed emotional condition.

In a decision dated January 28, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an injury in the performance of duty.

By letter dated February 26, 2003, appellant requested an oral hearing before an Office hearing representative. The hearing was held on September 25, 2003. Appellant submitted a letter from Dr. Harper dated September 26, 2003, who noted that appellant believed his anxiety was due to a hostile interaction with his supervisor. He noted that the interaction led to a significant exacerbation of appellant's anxiety.

In a decision dated January 15, 2004, the hearing representative affirmed the Office decision of January 28, 2003.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹

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 under the Federal Employees' Compensation Act.² When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.³ Perceptions and feeling alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁴

The Board has recognized that verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances. This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Act.⁵ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.⁶

ANALYSIS

Appellant alleged that his emotional condition resulted from a verbal confrontation with a supervisor. He indicated that a supervisor, Mr. Blevins, entered his office and threw a statement on his desk and yelled at him regarding posting the statement on a bulletin board. Mr. Blevins stated that he should be at another location doing his job. The record establishes that the yelling incident occurred as alleged and was corroborated by a witness, Mr. Cavendish, who overheard Mr. Blevins yell at appellant. Appellant's supervisor, Mr. Gillenwater, also noted on the CA-1 that the incident did in fact occur. As noted above, the Board has recognized the compensability

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ *Fred Faber*, 52 ECAB 107, 109 (2000).

⁶ *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

of physical threats or verbal abuse in certain circumstances.⁷ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.

Having considered the totality of circumstances, the Board finds that the yelling incident of December 4, 2002 involving Mr. Blevins does not represent a compensable employment factor.⁸ Mr. Blevins raised his voice with appellant and tossed documents on his desk. Although this behavior is not entirely professional, the Board finds that it does not rise to the level of compensable verbal abuse. While appellant may have been disturbed by Mr. Blevins' remarks on December 4, 2002, the Board has held that not every ostensibly offensive statement uttered in the workplace will give rise to coverage under the Act.⁹ The record establishes that the incident arose as appellant did not seek approval from the district manager prior to posting a statement on a bulletin board. The fact that Mr. Blevins raised his voice does not support a finding that he verbally abused appellant on December 4, 2002. The manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by the Act.¹⁰ This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.¹¹ In the instant case, the evidence is not sufficient to establish that Mr. Blevins acted unreasonably in discharging his managerial duties. As appellant failed to establish a compensable employment factor, the Office properly denied his claim without addressing the medical evidence of record.¹²

CONCLUSION

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

⁷ See *Fred Faber*, *supra* note 5.

⁸ *Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

⁹ *Id.*

¹⁰ See *Marguerite J. Toland*, *supra* note 6.

¹¹ *Id.*

¹² See *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member