

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

OFREZINNIA APODACA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
El Paso, TX, Employer**

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**Docket No. 04-1517
Issued: November 5, 2004**

Appearances:
Ofrezinnia Apodaca, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 19, 2004 appellant filed a timely appeal of a February 23, 2004 decision of an Office of Workers' Compensation Programs' hearing representative, affirming a February 13, 2003 decision that appellant had not established an emotional condition causally related to compensable work factors. 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 has established that she stained an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On December 30, 2002 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim and claim for continuation of pay/compensation alleging that she sustained an emotional condition causally related to a December 28, 2002 employment incident. Appellant stated on the claim form that the cause of injury was a "supervisor's demeaning behavior--

approached/charged toward me.” In a statement dated January 3, 2003, appellant alleged that on December 28, 2002 she was handed a notice for redelivery of a parcel, appellant approached supervisor L.D. Evans and told him of the notice but he walked away. According to appellant, she placed the notice on a desk and a few minutes later Mr. Evans shouted “I told you to go get it” and when appellant stated that she did not, Mr. Evans “turned around very abruptly and charged to my case with this look on his face that was quite bewildering and shouted “I told you to go get it.” Appellant stated that she was shocked by his behavior and scared by the “attacking movements.”

In a statement dated December 28, 2002, Mr. Evans indicated that on that date appellant asked him if he could retrieve a redelivery parcel and he told appellant that she should retrieve the parcel. A few minutes later he noticed the redelivery notice on a desk and he returned the notice to appellant’s work area and stated to appellant that he had told her to retrieve the parcel. Mr. Evans stated that appellant began arguing that he had not told her to get the parcel, that it was not her job and she would not get the parcel. According to Mr. Evans, he told appellant “in a more assertive voice” to get the package. In a statement dated January 14, 2003, Mr. Evans indicated that he did not shout at appellant, nor did he charge or attack appellant verbally or physically.

The record contains brief witness statements from coworkers regarding the incident. Noel Cagnet a coworker stated that he heard Mr. Evans tell appellant to get the parcel, using a normal tone of voice. A second witness whose name is illegible reported that he heard Mr. Evans tell appellant to get the parcel and appellant asked why she should have to get it rather than a clerk. Dwaine D. Holmos, a coworker reported that he heard a “heated discussion” but he did not know what the discussion was about. Another witness, Yuh-Jy Pierce, provided two statements. In a statement dated December 20, 2002, the witness reported only that Mr. Evans told appellant to get the parcel. In a December 31, 2002 statement Yuh-Jy Pierce stated that appellant replied to Mr. Evans “I thought you guys supposed to get it, I need it now!” and Mr. Evans again told appellant to get the parcel “in an intimidating way.”

In a decision dated February 13, 2003, the Office denied the claim, finding that appellant did not establish a compensable work factor. Appellant requested an oral hearing and a hearing was held on December 18, 2003.

In an employing establish grievance form dated May 23, 2003, appellant alleged that Mr. Evans had violated an employing establishment policy on threats and violence in the workplace. A November 25, 2003 form indicates that the grievance was settled “without prejudice to the position of either party” and that management would maintain an atmosphere of mutual respect.

In a decision dated February 23, 2004, an Office hearing representative affirmed the February 13, 2003 decision. The hearing representative found that appellant had not established a compensable work factor.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵

ANALYSIS

In this case, appellant has alleged that an incident on December 28, 2002 involving Mr. Evans contributed to an emotional condition. The initial question presented is whether the evidence substantiates the traumatic incident alleged by appellant on December 28, 2002 constitutes a compensable factor of employment. Appellant's allegation is that Mr. Evans approached her in a threatening manner and spoke to her in a demeaning way regarding a redelivery parcel. Since the incident involved a supervisor's handling of an administrative matter, the issue is whether the supervisor erred or acted abusively. A claimant must support her

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

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

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

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁶

With respect to the allegation that Mr. Evans charged toward appellant, the record does not establish the incident occurred as alleged. He denied the allegation and although there were witnesses who heard a conversation between appellant and Mr. Evans regarding the parcel, none could support the allegation that Mr. Evans charged appellant or otherwise physically threatened her on December 28, 2002. Based on the evidence of the record, the Board does not find a compensable factor based on an allegation of threatening behavior.

As to the allegation that the supervisor shouted at appellant and spoke in a demeaning manner, the record does not establish a compensable work factor. The statements from appellant, Mr. Evans and witnesses indicate that there was a disagreement between appellant and the supervisor in which both parties raised their voices. One witness reported a “heated discussion” and Mr. Evans acknowledged that he used an “assertive” voice in directing appellant to get the parcel. While appellant may have perceived the supervisor’s tone of voice to be demeaning, there is no probative evidence sufficient to find that the supervisor’s actions were erroneous or abusive. The November 25, 2003 grievance settlement did not make any specific finding with respect to the actions of Mr. Evans and the grievance was resolved without prejudice to the position of either party. The settlement indicates that management will maintain an atmosphere of mutual respect but does not find that management had violated the employment contract or committed error.

It is well established that not every statement uttered in the workplace will give rise to coverage under the Act.⁷ The supervisor in this case was performing his supervisory duties and asking appellant to retrieve a parcel in a firm voice does not rise to the level of verbal abuse or otherwise establish a compensable work factor.⁸ Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

CONCLUSION

Appellant did not substantiate a compensable work factor on December 28, 2002 because there is no probative evidence establishing error or abuse by the employing establishment in an administrative matter.

⁶ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁷ *See Marguerite J. Toland*, 52 ECAB 294 (2001); *Fred Faber*, 52 ECAB 107 (2000).

⁸ *Compare Abe E. Scott*, 45 ECAB 164 (1993) (where a supervisor’s use of a derogatory epithet was a compensable employment factor).

⁹ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 23, 2004 is affirmed.

Issued: November 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member