

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

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**MICHAEL GARCIA, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Francisco, CA, Employer**

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**Docket No. 04-1081  
Issued: October 26, 2004**

*Appearances:*  
*Michael Garcia, 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 March 15, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated December 15, 2003 denying his emotional condition claim on the grounds that it was not sustained in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition claim.

**ISSUE**

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

**FACTUAL HISTORY**

On July 17, 2003 appellant, a 42-year-old mail carrier, filed a traumatic injury claim alleging his depression and anxiety disorder were due to being threatened and yelled at by Roland Maples, his supervisor, to return to work while Mr. Maples shook and waved a clipboard at him on March 19, 2002.

In support of his claim, appellant submitted witness statements from Richard Cains, Mario Kattengell and Jerry C. Smith, coworkers, who witnessed Mr. Maples raising his voice and his clipboard at appellant when ordering him to return to work.

By letter dated August 12, 2003, the Office requested additional factual and medical information from appellant.

In a decision dated September 12, 2003, the Office denied appellant's claim on the grounds that he failed to submit any medical evidence in support of his claim. The Office found the evidence sufficient to support that the event occurred as claimed, but insufficient to establish causal relationship as no condition had been diagnosed in connection to the accepted event.

In response to a request for additional information, appellant submitted an August 12, 2003 report by Dr. George D. Karalis, an attending physician specializing in psychiatry, and a statement by Mark Mindrup, a shop steward, who stated that Mr. Maples told him to go back to his station after he had requested time to speak with appellant on a union matter.

Dr. Karalis, in his August 12, 2003 report, diagnosed major depression. He concluded that the condition "was caused by a fear of being physically assaulted by Mr. Maples waving a clipboard, and by simultaneous out-of-control anger" Mr. Maples expressed toward appellant on March 19, 2002. In support of his conclusion, Dr. Karalis stated that this incident caused appellant's depression as it "was traumatic because the patient was faced with an angry Mr. Maples who was waving a clipboard at the patient in a threatening manner while yelling at him."

By decision dated December 15, 2003, the Office modified the September 12, 2003 claim to reflect that appellant's claim was denied on the grounds that he failed to establish that his injury was sustained in the performance of duty. The Office found the evidence insufficient to support his contention that his supervisor assaulted or verbally abused him during his conversation with a union steward on March 19, 2002. The Office also found that the supervisor's raising of his clip board at appellant was not a physical threat.<sup>1</sup>

### **LEGAL PRECEDENT**

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 factors of his federal employment.<sup>2</sup> 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

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<sup>1</sup> The Office noted that this incident had been discussed in a June 30, 2003 decision by a hearing representative in claim number 13-2057801.

<sup>2</sup> *Edward C. Heinz*, 51 ECAB 652 (2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>3</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*<sup>4</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>5</sup> There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under the Act. When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>6</sup>

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 factors of employment and may not be considered.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

The Office issued a decision on December 15, 2003 which denied appellant's claim on the basis that the evidence was insufficient to establish that he sustained an injury in the performance of duty.

Appellant attributed his emotional condition to the actions of his supervisor, Mr. Maples. He alleged that he developed an emotional condition due to Mr. Maples' yelling at him to get back to work while Mr. Maples shook and waved a clipboard at him.

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<sup>3</sup> *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004); *Judy L. Kahn*, 53 ECAB \_\_\_\_ (Docket No. 00-457, issued February 1, 2002); *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> 28 ECAB 125 (1976).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Anthony A. Zircon*, 44 ECAB 751 (1993).

<sup>7</sup> See *Phillip L. Barnes*, *supra* note 3; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>8</sup> *Lori A. Face*, 55 ECAB \_\_\_\_ (Docket No. 03-2015, issued January 6, 2004).

The March 19, 2002 incident with Mr. Maples, appellant's supervisor, where appellant was told to return to work, falls within the scope of an administrative or personnel matter.<sup>9</sup> In order to be a compensable work factor, there must be evidence of error or abuse by the supervisor. Appellant has alleged that the supervisor's conduct rose to the level of verbal abuse, but the Board finds that the allegation does not establish error or abuse. The record indicates that there was a disagreement with the supervisor on March 19, 2002, and witness statements from coworkers, Mr. Cairns, Mr. Kattengell and Mr. Smith, indicated that the supervisor spoke in a loud voice and waved a clipboard that he was holding while talking to appellant. This factual scenario does not rise to the level of error or verbal abuse. While Mr. Kattengall, Mr. Smith and Mr. Cains related Mr. Maples raised his voice and clipboard at appellant, they have not provided any information on what Mr. Maples said to appellant at the time. In addition appellant did not provide any specific details as to what was said by Mr. Maples. Not every statement uttered in the workplace will give rise to coverage under the Act, and a raised voice in the course of a conversation does not in itself warrant a finding of verbal abuse.<sup>10</sup> Whether a statement or raised voice rises to the level of verbal abuse depends on the totality of the circumstances. Without more detail of the confrontation and verbal assault the Board finds that appellant has not shown how it rises to the level of verbal abuse or otherwise falls within the coverage of the Act.<sup>11</sup> The Board therefore finds insufficient evidence establishing error or abuse in this case.

### CONCLUSION

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. The Board need not further address the medical evidence of record.<sup>12</sup>

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<sup>9</sup> The assignment of work and related matters are administrative functions; see *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>10</sup> *Carolyn S. Philpot*, 51 ECAB 175, 179 (1999).

<sup>11</sup> See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

<sup>12</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Lori A. Facey*, 55 ECAB \_\_\_\_ (Docket No. 03-2015, issued January 6, 2004); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

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

Issued: October 26, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member