United States Department of Labor
Employees' Compensation Appeals Board

MICHAEL J. HOFFMAN, Appellant	)	
and	)	**Docket No. 04-1113**
	)	**Issued: September 20, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Eagan, MN, Employer	)	

Appearances:
Michael J. Hoffman, 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 March 22, 2004 appellant filed a timely appeal from the March 2, 2004 merit decision of the Office of Workers' Compensation Programs, which denied modification of the denial of his claim for compensation on the grounds that he failed to establish that he sustained an injury in the performance of duty. 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 has established that he sustained an injury in the performance of duty. On appeal appellant contends that his case is similar to *Jerry D. Campbell*, in which the Board found that a "disagreement with another employee over a technical procedure in connection with work and a subsequent confrontation with his supervisor concerning the incident" was a factor of employment.[1]

[1] 32 ECAB 1959 (1981).

FACTUAL HISTORY

On October 21, 2002 appellant, then a 51-year-old senior computer systems specialist, filed a claim for compensation alleging that on October 8, 2002 a coemployee yelled at him and, after a period of time, he began yelling back. He stated that this incident triggered an episode of depression. Appellant was on medical leave from October 16 to 25, 2002.

The employing establishment controverted the claim. Submitted was an October 25, 2002 threat assessment team (TAT) investigation report by Roger Rubin, a threat assessment team leader. The report related that on October 8, 2002 appellant had an outburst in the work area. During the course of that outburst, he yelled repeatedly at Patti Chue, a coworker. His manner was angry and violent in nature. The investigative results revealed that appellant became upset when Ms. Chue asked another coworker why the other employee was asking appellant about a work situation when she was supposed to be in charge. The report stated that "according to the witness statements, [appellant] became angry and began yelling at Ms. Chue. As his anger grew he began hitting the table and the cubicle wall. As a result, the top metal track of the cubicle was knocked off, nearly striking the other coworker's head. Ms. Chue has alleged that, when [appellant] came around the cubicle wall to retrieve the metal track, he continued yelling at her and approached her with the metal track in hand. Other witness statements confirm all but the statement that [appellant] approached [Ms. Chue] with the track in hand." Copies of statements from appellant, Ms. Chue, coworkers Pete Thor, John (J.P.) Malahowski and John Chou and supervisor, Chuck Rudser, were provided with the report.

By letter dated December 5, 2002, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised him about the factual and medical evidence he needed to submit to establish his claim.

By letter dated January 2, 2003, appellant stated that on October 8, 2002 Mr. Chou had asked him a work-related question. Ms. Chue raised her voice at both of them because Ms. Chue had asked appellant the question instead of her. Appellant related that he immediately called Mr. Rudser, his supervisor, to inform him what was transpiring. He indicated that Ms. Chue berated Mr. Chou and that appellant had asked Ms. Chue to stop as it was getting him upset. Ms. Chue started to raise her voice to appellant again and telling him to mind his own business. He stated that it was then that he started to yell at Ms. Chue saying "if you want to yell, I can yell just as loud as you or louder. Is that what you want to do?" Appellant indicated that the louder she yelled, he got even louder. He stated that he hit the side wall of his cubicle in frustration and that the top piece of it fell on Mr. Chou's desk. Mr. Rudser came into the room and stated that he could hear him out in the hall. After Mr. Rudser spoke to Ms. Chue, he directed appellant to go into a conference room and when appellant started to say something, Mr. Rudser told him to "shut the F**k up." Appellant stated that Mr. Rudser would not let him explain what had happened since the time he had telephoned him. When Mr. Rudser asked appellant why he did not get up and leave the room, appellant stated that he simply had not thought of it. Mr. Rudser did not tell him to do that when he had telephoned him and Ms. Chue had started yelling. Appellant felt overwhelmed by what had happened and Mr. Rudser's reaction to it, as he had never spoken to him in this manner in the past. He stated that he apologized to Mr. Rudser and broke down crying on several occasions. Appellant apologized to his coworkers for yelling, but could not bring himself to say anything to Ms. Chue. He called the Employee Assistance

Program hotline when he got home from work. Appellant also submitted medical documentation. In an October 21, 2002 report, Dr. Ronald W. Hewitt, a Board-certified family practitioner, noted that he had an episode at work with a coworker where he lost his temper, which bothered him greatly. An assessment of insomnia and depression was provided.

In an October 29, 2002 report, Dr. Molly Silas, a Board-certified psychiatrist, noted that appellant stated that he had a very stressful incident in which a coworker yelled at him and other coworkers. Appellant eventually yelled back at the coworker and his supervisors started yelling at him. An impression of adjustment disorder versus major depressive disorder, recurrent, moderate, with anxious features was provided. In a December 27, 2002 report, Dr. Silas advised that appellant's diagnosis was major depression with anxious features and opined that such diagnosis was directly aggravated by the argument at work on October 8, 1992. She further stated that his medical leave/disability was from October 16, 2002 through January 9, 2003. In a December 6, 2002 duty status report, Dr. Silas diagnosed depression, reexacerbated and indicated that appellant was very anxious and fearful of contract with the person with whom he had the argument.

By decision dated January 10, 2003, the Office denied appellant's claim finding that he had not established a compensable factor of employment arising out of and in the performance of duty.

By letter dated February 3, 2003, appellant requested reconsideration, noting his responsibilities as a senior computer systems specialist to answer technical questions. He indicated that Ms. Chue alternated weeks as to who would be responsible for overseeing the work load schedule and handling major problems. On the evening of October 8, 2002, Mr. Chou asked appellant a work-related question and Ms. Chue "immediately jumped up and raised her voice to both Mr. Chou and appellant, stating that it was her week to be in charge. Appellant told Mr. Chou to ask Ms. Chue, as it was her week to be the lead technician and that, no matter who the lead technician was, either Ms. Chue or appellant could answer simple questions. Appellant again described the incident with Ms. Chue and his later discussion with Mr. Rudser and stated that both these incidents had a traumatic effect on him. Bargaining unit standards and additional medical information were submitted.

In a January 8, 2003 email, Suzanne Leonard, a union steward, advised that she had asked Mr. Rudser if he cursed at appellant, who responded that he had. Mr. Rudser took appellant into a conference room to talk and that appellant was in a very emotional state, yelling at him to the point where appellant was not listening to what Mr. Rudser said and would not stop. Mr. Rudser stated that he needed to get appellant's attention so he would listen instead of talk and, not knowing what to do, he cursed at appellant. Mr. Rudser also later apologized to appellant.

By decision dated March 19, 2003, the Office denied modification of its January 10, 2003 decision. The Office found that the witness statements failed to support appellant's allegation that Ms. Chue had yelled at him in the manner claimed. The Office found that the email from Ms. Leonard was hearsay and insufficient to accept that the claimed cursing and mistreatment at the hands of Mr. Rudser occurred as alleged.

In a June 2, 2003 letter, appellant requested reconsideration and presented arguments which he believed substantiated his claim that Ms. Chue yelled at him in the manner alleged and that Ms. Leonard's email should not be considered hearsay. A copy of a January 10, 2003 notice of suspension was submitted in support of his allegation that Ms. Chue had spoken in a loud voice. In a June 20, 2003 letter, appellant stated that he had reviewed the witness statements and alleged that Mr. Chou's statement confirmed his allegation that Ms. Chue had yelled at him in the manner alleged. In a July 26, 2003 statement, appellant contended that Mr. Thor's statement supported his allegation that Ms. Chue had raised her voice.

By decision dated August 29, 2003, the Office denied appellant's reconsideration request on the grounds that his legal contentions had no reasonable color of validity, finding that the suspension letter, although new, was not relevant evidence and appellant's interpretation of what the witness statements were saying did not constitute new factual evidence not previously considered.

In a letter dated November 4, 2003, appellant requested reconsideration. He asserted that Mr. Rudser had slammed the door to the conference room and cursed at him. He submitted copies of statements from Mr. Chou, Mr. Thor and Mr. Malahowski answering appellant's specific questions pertaining to the October 8, 2002 incident with "yes" and "no" responses and an October 9, 2003 email from Mr. Rudser indicating that the contents of Ms. Leonard's January 8, 2003 email pertained to the incident of October 8, 2002.

By decision dated March 2, 2004, the Office found that the new evidence was insufficient to warrant modification of its previous decisions. The Office found that the witnesses' responses to appellant's statements were of limited and minimal probative value in the evidentiary aspect of the claim. The Office further found that while the evidence substantiated that Mr. Rudser cursed at appellant in the conference room in an effort to get his attention and to get him to stop yelling, the evidence failed to establish that this administrative decision of the manager constituted a hostile work environment and verbal abuse as alleged by appellant. The Office further found that there was no evidence to corroborate that the manager (Mr. Rudser) slammed the door shut as noted by appellant in his most recent statement.

LEGAL PRECEDENT

To establish a claim for an emotional condition in the performance of duty, a claimant must submit factual evidence establishing employment factors or incidents alleged to have caused or contributed to the condition; medical evidence establishing an emotional or psychiatric disorder; and rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[2]

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some

[2] *Leslie C. Moore*, 52 ECAB 132 (2000).

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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] The Act further provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[4]

The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[5] "In the course of employment" deals with the work setting, the locale and the time of injury, whereas "arising out of the employment" encompasses not only the work setting, but also a causal concept, the requirement being that an employment factor caused the injury. In the compensation field, it is generally held that an injury arises out of and in the course of employment when it takes place: (a) within the period of employment; (b) at a place where the employee may reasonably be expected to be in connection with the employment; (c) while he is reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto; and (d) when it is the result of a risk involved in the employment or the risk is incidental to the employment or to the conditions under which the employment is performed.[6]

The disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[7] A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of federal employment.

When a claimant does not establish any compensable employment factors, it is not necessary to consider the medical evidence.[8]

ANALYSIS

Appellant alleged that the October 8, 2002 workplace incident with Ms. Chue contributed to his emotional condition. On that day appellant was exercising his duties as a lead technician when Mr. Chou, a coworker, asked him a work-related question. He alleged that Ms. Chue raised her voice because Mr. Chou should have asked her the question instead of appellant and that, when she started berating Mr. Chou, appellant asked her to stop as it was upsetting him. He alleged that Ms. Chue started raising her voice to him and that he started yelling back.

[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8102(a).

[5] *Timothy K. Burns*, 44 ECAB 291 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990); *Christine Lawrence*, 36 ECAB 422 (1985).

[6] *See Carmen B. Gutierrez (Neville R. Baugh)*, 7 ECAB 58 (1954); *Harold Vandiver*, 4 ECAB 195 (1951).

[7] *James E. Norris*, 52 ECAB 93 (2000).

[8] *Fred Faber*, 52 ECAB 107 (2000).

In this case, appellant was in the performance of his duties as a lead technician when Mr. Chou approached him with a work-related question. The remaining issue is whether appellant was in the performance of his duties with respect to the ensuing yelling incident with Ms. Chue and consequences of such incident. The Board notes that the Office found that Ms. Chue did not yell at appellant in the matter alleged. The Board finds, however, that regardless of whose version of the October 8, 2002 incident is established as factual and the issue of who started yelling makes no difference insofar as compensability is concerned.[9]

In this case, the sole connection between appellant and Ms. Chue was the employment and the shared duties and responsibilities of being a lead technician. The Board has recognized that friction and strain among employees may arise as an inherent part of the conditions of employment and the strain of enforced close contact may in itself, provide the necessary work connection.[10] In this case, the Board finds that the shared duties and responsibilities of being a lead technician brought appellant and Ms. Chue together and created the conditions which resulted in their verbal altercation.[11] Thus, appellant has established the necessary work connection to bring his argument with Ms. Chue into the performance of duty. Moreover, arguments between coworkers brought together by their employment are incidental to the employment and brings the claimed injury within the course of employment.[12] Appellant's responsibilities of being a lead technician brought him and Ms. Chue together and resulted in an argument. As his employment brought him and Ms. Chue together, the ensuing argument is incidental to the employment and brings the claimed injury within the course of employment. Even if appellant were considered the "aggressor" or "initiator" of the dispute, the October 8, 2002 verbal altercation would still be compensable. Although he may be subject to discipline for his failure to handle the situation appropriately under employing establishment regulations and procedures, this factor does not defeat his claim for compensation.[13] For these reasons, the Board finds that appellant established a compensable factor of employment in regard to the argument between appellant and Ms. Chue on October 8, 2002.

Appellant also alleged that Mr. Rudser's cursing at him constituted a hostile work environment and verbal abuse. While his dissatisfaction with perceived poor management is not covered under the Act,[14] his reaction to being yelled and cursed at by his supervisor may constitute a compensable factor where supported by the evidence.[15] The Board has recognized the compensability of verbal altercation or abuse in certain circumstances. This does not imply,

[9] Based on the October 25, 2002 threat assessment team investigative report, the Board further finds that appellant did not approach Ms. Chue with the fallen metal track after the yelling began.

[10] *Shirley I. Griffin*, 43 ECAB 573 (1992) (the Board found compensable an altercation that arose out of the claimant's failure to introduce a coworker to another coworker).

[11] *Id.*

[12] *Allan B. Moses*, 42 ECAB 575 (1991).

[13] *See Oscar F. Jiminez*, Docket No. 02-1035 (issued November 8, 2002).

[14] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[15] *Garry M. Carlo*, 47 ECAB 299 (1996).

however, that every statement uttered in the workplace will give rise to coverage under the Act.[16] While Mr. Rudser's cursing at appellant on October 8, 2002 may have been inappropriate for the workplace, the record indicates that he cursed at appellant in order to get his attention and to get him to stop yelling. Having considered the totality of the circumstances, the Board finds that the October 8, 2002 incident involving Mr. Rudser does not represent a compensable employment factor.[17]

Although appellant has established a compensable factor of employment with regard to his verbal altercation with Ms. Chue, his burden of proof is not discharged by the fact that he has established a compensable employment factor which may give rise to disability under the Act. Appellant also has the burden of submitting sufficient medical evidence to support his claim that this factor resulted in an employment-related emotional condition.[18] In the instant case, he has submitted supporting medical evidence in the present case; *i.e.,* Dr. Silas's October 29, December 6 and 27, 2002 reports, which indicated that appellant was suffering from major depression with anxious features which was directly aggravated by an argument at work on October 8, 1992. Although the medical evidence submitted by appellant is insufficient to meet appellant's burden of proof, it is sufficient to raise an uncontroverted inference that identified factors of his federal employment may have contributed to his alleged emotional condition or disability and is sufficient to require further development of the record.[19]

On remand, therefore, the Office should further develop the medical evidence as is appropriate. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment and this case is remanded to the Office for further development of the medical evidence to be followed by an appropriate decision.

[16] *Fred Faber*, 52 ECAB 107 (2000).

[17] *Id.*

[18] *Isabel R. Pumpido*, 51 ECAB 326 (2000).

[19] *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated March 2, 2004 is set aside and the case is remanded to the Office for further proceedings consistent with this decision.

Issued: September 20, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member