

more than eight hours a day.¹ He asserted that on September 17, 2002 he was instructed to complete his route which would entail working more than eight hours. Appellant's supervisor, Jim Pero, then had a discussion with him.

Appellant submitted a narrative statement dated December 27, 2002, alleging that his preexisting emotional condition was aggravated by the events of September 17, 2002. He stated that the employing establishment attempted to force him to work beyond his restrictions on that date and that he was subject to "continuous harassment" regarding his restrictions. In May 2002, the employing establishment increased his route from 8 hours to 10½ hours which necessitated daily assistance. He alleged that, when he refused to exceed his work restrictions on September 27, 2002 Mr. Pero conducted an official discussion based on unsatisfactory performance. Appellant stated that this discussion was held outside in the parking lot at the employing establishment while he sat in his postal vehicle. He asserted that this was unorthodox and that the discussion was degrading, belittling and humiliating. At the conclusion of the discussion he closed his vehicle door. Mr. Pero stated that appellant pinched his hand in the door. As a result he was removed as a letter carrier.

Linda Golden, appellant's immediate supervisor, responded to his allegations and noted that he was placed off work by the employing establishment as a result of slamming his manager's hand in his vehicle door during an official discussion. She stated that appellant was awaiting disciplinary action.

In a letter dated September 19, 2002, the employing establishment placed appellant in an emergency off-duty status effective September 17, 2002. It indicated that Mr. Pero was attempting to conduct an official discussion with appellant, who closed the door of his vehicle while Mr. Pero's hand was still in the door. Mr. Pero sought medical treatment.

Dr. Arthur J. Forman, a Board-certified psychiatrist, completed a report on January 14, 2003 noting appellant's previous emotional condition. He stated that on September 17, 2002 appellant was placed in a nonpay status following the incident in which he allegedly closed his vehicle door on Mr. Pero's hand and that in October 2002 appellant was notified that he was being removed. Appellant alleged that he was being harassed due to past grievances that he had filed. He stated that on September 17, 2002 he was negotiating some grievances in his capacity as a union steward and that the negotiations lasted three hours and were heated. Appellant warned Mr. Pero to watch his hand as he closed the vehicle door. Dr. Forman stated that appellant experienced an exacerbation of his previously diagnosed adjustment reaction with mixed emotional features, as well as chronic anxiety and depression as a result of allegations that he deliberately injured Mr. Pero's hand and to surrendering his badge to postal inspectors.

The Office requested additional evidence regarding appellant's claim by letter dated February 11, 2003.

Mr. Pero responded to appellant's allegations on February 4, 2003. He stated that his route was inspected in May 2002 and was adjusted to as near eight hours as possible. Mr. Pero stated that on September 17, 2002 appellant informed his supervisor very late in the morning that

¹ Appellant submitted a duty status report dated August 19, 2002 listing his work restrictions due to back pain.

he would require additional assistance to complete the route within eight hours. Appellant suggested that he bring mail back from the street and Ms. Golden stated that this was not appropriate. Mr. Pero stated:

“At the moment supervisor [Ms.] Golden was busy on the telephone handling a separate issue. Her plan, as she had done in similar situations in the past, was to either check on [appellant] later in the day or send another carrier to ‘look him up’ on the street to see if he still required assistance. If so, it would have been provided at that time. This was not unusual, especially since [appellant’s] request came so late after the workload for the day had already been planned and allocated.”

He stated that appellant was never forced to work beyond his medical restrictions.

Regarding the discussion on September 17, 2002 Mr. Pero stated that he attempted to inform appellant of time wasting procedures he had observed earlier that morning. He stated that if appellant had followed proper procedure, he might not have required additional assistance. Mr. Pero followed appellant to observe him loading his vehicle, but appellant became agitated and questioned why Mr. Pero was observing him with a raised voice. Mr. Pero stated that he did not raise his voice and conducted the discussion regarding appellant’s work performance in private as the parking lot was empty. Appellant requested representation, Mr. Pero denied this request and appellant began to walk away toward his vehicle. He also interrupted Mr. Pero, stating that he did not have to listen. Appellant entered the driver’s seat of his vehicle and Mr. Pero followed him to his vehicle standing outside with his hand resting on the inside of the door jam. He stated:

“At this point, [appellant] said watch your hand and slammed the door on my hand.... My immediate reaction was to remove my hand from the door and I said you did that on purpose. I truly believe that [appellant] did do it on purpose. [Appellant] knew my hand was in the way but he chose to slam the door anyway.”

Mr. Pero gave a statement to postal inspectors and then sought medical treatment.

On March 12, 2003 Dr. Forman diagnosed adjustment reaction with mixed emotional features (anxiety and depression) chronic.

On March 10, 2003 appellant again contended that he had been forced to work beyond his restrictions. In a statement to the postal inspectors, he reported on September 17, 2002 that he was to discuss grievances with Mr. Pero. Appellant began his position duties and requested additional assistance to complete his route. Ms. Golden denied his request and Mr. Pero told him to carry over his eight hour a day restriction. Appellant refused and Mr. Pero allegedly began to belittle him in front of his coworkers. He stated that appellant had not worked a day since he had been at the employing establishment. Mr. Pero followed him to his vehicle and made comments regarding appellant’s insufficiency and performance. He then conducted an official discussion pertaining to appellant’s time wasting practices. Appellant stated that he also gave his opinion on different matters while sitting in the driver’s seat of his vehicle. He informed Mr. Pero that he was shutting his door and did so. Once the door closed, Mr. Pero stated, “You did that on

purpose.” Appellant did not know what he was talking about and then stuck his head out the window and observed that a part of Mr. Pero’s hand had gotten pinched in the door. He denied deliberately injuring Mr. Pero and stated that he did not see his hand in a position such that the door would catch it when it was closed.

Ms. Golden completed a statement on September 17, 2002, noting that appellant had requested additional assistance with his route which Mr. Pero denied. Appellant stated that he would bring the mail back and Ms. Golden told him not to do this. She was talking on the telephone, but overheard appellant use a curse word in his conversation with Mr. Pero. Ms. Golden went outside and observed appellant and Mr. Pero having a heated conversation in the parking lot.

In reply to the question of whether he told appellant that he had not worked a day since he had been at the employing establishment, Mr. Pero stated, “Not exactly.” He stated that he was referring to an eight-hour day.

Matthew Rezanka, a coworker, submitted a statement dated October 2, 2002 asserting that he overheard Mr. Pero state that he had not seen appellant work at all in a loud and angry tone. Mr. Pero responded on March 25, 2003 and denied being angry with appellant. He further stated that he never required appellant to work beyond his restrictions which were “as tolerated.”

By decision dated June 9, 2003, the Office denied appellant’s claim for compensation finding that he had established a compensable factor of employment, Mr. Pero’s statement that appellant had not worked a full day since he has been at the employing establishment. However, the Office found that the medical evidence did not support that this compensable factor caused or contributed to appellant’s emotional condition.

Appellant requested an oral hearing on June 24, 2003.

In a letter dated July 20, 2003, appellant noted that an arbitrator reinstated him to his letter carrier position on May 28, 2003. The arbitrator sustained his grievance in part and reduced his removal to a suspension for time served with no back pay.

Appellant returned to work on June 4, 2003, but A.B. Adams, the acting manager, required that he submit a work release from Dr. Forman. The employing establishment’s health unit cleared appellant to return to work on June 18, 2003, but the employing establishment refused to allow him to return to work on July 15, 2003.

Appellant testified at his oral hearing on March 9, 2004. The hearing representative limited his claim to the events of September 17, 2002. By decision dated June 1, 2004, the hearing representative affirmed the Office’s June 9, 2003 decision.

Appellant requested reconsideration on June 18, 2004. In support of his request, he resubmitted medical evidence already of record and disagreed with the employing establishment’s version of events. Appellant also submitted a portion of the arbitrator’s decision dated March 28, 2003. She found that Mr. Pero stated in the presence of another carrier that appellant had not worked a day since Mr. Pero got there and that he later apologized for the remark. The arbitrator concluded that appellant intended to end the conversation with Mr. Pero

by closing his door, but that it was not his intent to injure the supervisor. She found that management did not have just cause to issue a removal and reduced the discipline to a suspension for time served. Appellant also submitted statements from investigative interviews.

By decision dated August 31, 2004, the Office reviewed appellant's claim on the merits and denied modification of the June 1, 2004 decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 of worker's compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act.⁴ While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.⁵ Reactions to disciplinary matters such as letters of warning and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable until it is established that the employing establishment erred or acted abusively in such capacity.⁶

Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. Although the Board has recognized the compensability of verbal abuse in certain circumstances this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁷

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *James E. Norris*, 52 ECAB 93, 100 (2000).

⁵ *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

⁶ *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

⁷ *Marguerite J. Toland*, 52 ECAB 294 (2001).

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.⁸ 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.⁹

ANALYSIS

The Office accepted that appellant was subjected to verbal abuse by Mr. Pero. He asserted that Mr. Pero stated that he had not worked a day since Mr. Pero had joined the employing establishment. Mr. Pero acknowledged that he had stated something to the effect that appellant had not worked a full eight-hour day. A witness, Mr. Rezanka, stated that he heard Mr. Pero state that he had not seen appellant work at all. The arbitrator also noted that Mr. Pero had said that appellant had not worked a day since Mr. Pero joined the employing establishment and that a coworker had overheard this remark. Appellant has submitted sufficient evidence to establish that Mr. Pero made a disparaging remark regarding his work ethic. Although the Board does not consider every statement uttered in the workplace to give rise to compensability under the Act, the Board has noted that derogatory comments related to the performance of appellant's regular or specially assigned duties may constitute a compensatory factor.¹⁰ The Board finds that this statement was a compensable factor of employment as found by the Office.

Appellant attributed his emotional condition to the requirement that he exceed his physical restrictions by working more than eight hours a day. The Board has held that being required to work beyond one's physical limitations could constitute a compensation employment factor if such activity was substantiated by the record.¹¹ In this case, appellant's supervisors, Ms. Golden and Mr. Pero denied that he was required to exceed this restriction. Appellant did not submit any evidence substantiating that he was required to work beyond his physical restriction. The Board finds that he has not established a compensable employment factor in regard to exceeding his work limitations.

Appellant alleged that his emotional condition was due to disciplinary actions by the employing establishment, including the official discussion with Mr. Pero and putting him in an off-work status. As noted above, disciplinary actions are considered to be administrative or personnel matters and are not compensable unless error or abuse by the employing establishment is established. In regard to the official discussion conducted in the parking lot, appellant has

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ *Frank B. Gwozdz*, 50 ECAB 434, 438 (1999).

¹¹ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

alleged that this discussion was unorthodox, but Mr. Pero has denied this allegation and appellant failed to submit any evidence substantiating his claim that the discussion should not have been held in the parking lot. He has failed to establish error or abuse in regard to the official discussion. The employing establishment's decision to place appellant in an off duty status on September 17, 2002 was also alleged as a factor of employment. While he has disagreed with his off duty placement, appellant has submitted no evidence that the employing establishment acted unreasonably in this action.¹² Therefore, he has not established error or abuse in regard to his emergency off-duty placement.

In the present case, appellant has established a compensable factor of employment with respect to the derogatory statement by Mr. Paso. However, his burden of proof is not discharged by the fact that he has established an employment factor which may give rise to compensable disability under the Act. To establish his claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he had an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹³

Appellant submitted a report from Dr. Forman, a Board-certified psychiatrist, dated January 14, 2003. He noted that the employing establishment placed appellant in a nonpay status on September 17, 2002 as a result of closing Mr. Pero's hand in the door of his vehicle. Dr. Forman also noted that the employing establishment eventually terminated appellant as a result of this incident. He stated that appellant had an exacerbation of his adjustment reaction with mixed emotional features, chronic anxiety and depression "as a result of this current action." Dr. Forman attributed appellant's condition to the events of September 17, 2002. This report is not sufficient to meet his burden of proof as Dr. Forman did not offer a clear statement of the specific factors which he felt caused or contributed to appellant's current condition. He did not address the inappropriate statement by Mr. Pero, the compensable factor found in this case. Rather, he addressed the administrative actions which were found not to constitute compensable factors.

CONCLUSION

The Board finds that appellant has established that Mr. Pero made an inappropriate derogatory comment regarding his regularly assigned duties and that this was compensable as verbal abuse. However, the Board finds that appellant has not substantiated any additional compensable factors and that he did not submit the necessary medical evidence to establish that his diagnosed condition was due to the accepted employment factor.

¹² As the employing establishment's decision to terminate appellant's employment occurred after September 17, 2002 this event will not be considered by the Board in evaluating this traumatic injury claim. The Office's regulation define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee).

¹³ See *William P. George*, 43 ECAB 1159, 1168 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 31 and June 1, 2004 are affirmed.

Issued: April 22, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member