

reasons.¹ Appellant asserted that he was forcibly removed from his duty station and that he was harassed by being forced to attend remedial training in February 2004. He did not stop work.

By letter dated April 6, 2004, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

In a statement dated February 20, 2004 and received by the Office on May 3, 2004, appellant indicated that on February 18, 2004 he called his supervisor, Curtis McCann, at about 3:00 p.m. and advised him of his location. Appellant alleged that Mr. McCann told him to finish delivering the mail on his route and return to the post office by 4:00 p.m. He called Mr. McCann back at 4:00 p.m. to tell him that he had too much mail to finish his route and return by 4:00 p.m. Mr. McCann then told him to finish his route and return to the post office by 5:00 p.m. and repeated this instruction when appellant replied to this was not possible. Appellant indicated that he returned to the post office at 4:50 p.m. with a tray of mail he was unable to deliver. He alleged that Mr. McCann ordered him to go into his office and refused his request to bring a representative from the union. Appellant asserted that Mr. McCann said, "I am going to terminate you" and asked for his identification badge. He claimed that Steve Colbert another supervisor told him that he needed to appear for a "fact finding" meeting the following day, but that he was later told the meeting was cancelled. Appellant indicated that he was not able to work his next scheduled day, February 20, 2004, and contended that medical documentation he submitted was wrongly rejected by the employing establishment.

By decision dated July 27, 2004, the Office denied the claim on the grounds that he did not establish any compensable employment factors.

Appellant submitted a July 29, 2004 decision of the Rio Grande Dispute Resolution Team (DRT) of the employing establishment, which resolved a grievance he had filed. In this decision, the DRT provided an account of the events of February 18, 2004, which was similar to that provided by appellant in his February 20, 2004 statement. The decision also included Mr. McCann's account of the events of that day which differs slightly from that of appellant.² The decision does not appear to contain any formal findings regarding the facts of the case. The DRT quoted portions of the Employee Labor Relations Manual, which indicated that employees are "expected to discharge their assigned duties conscientiously" and are "expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service." It also quoted a portion of the joint statement on violence and behavior in the workplace, which indicated that "it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities." The DRT asserted that Mr. McCann "acted inappropriately when he threatened the grievant with termination" and stated that "[i]nappropriate and unprofessional behavior, of the nature in this case, crosses the line from simple unprofessionalism to a violation of the Joint Statement." It indicated that threatening to

¹ The record contains a December 4, 2003 letter, which advised appellant that his "full[-]time collection route" was being abolished and that he was encouraged to bid on posted job vacancies for which he was eligible.

² The record does not contain any separate statements produced by Mr. McCann. The source of the comments attributed to Mr. McCann in the decision remains unclear.

terminate an employee, requesting his badge and informing the union representative that the employee will be terminated for bringing back mail all have the “same effect as the actual action.” The DRT asserted that Mr. McCann “lacked the skills necessary to communicate effectively on a professional level” and indicated that appellant should process his claim through the Office.

By decision dated September 23, 2004, the Office affirmed the July 27, 2004 decision. It found that the July 29, 2004 decision of the DRT did not show that the employing establishment committed wrongdoing.

LEGAL PRECEDENT

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 of workers’ 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.³ 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.⁴

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 employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶

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.⁷ 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

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated July 27, 2004, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated September 23, 2004, the Office affirmed its July 27, 2004 decision. The Board must review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that when he returned to the post office on February 18, 2004 with some undelivered mail, Mr. McCann wrongly told him "I am going to terminate you" and asked for his identification badge. He also claimed that the employing establishment improperly ordered him to attend remedial training, wrongly terminated his delivery route and unfairly rejected medical documentation he submitted in connection with leave usage.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave, improperly assigned work duties and unreasonably handled training matters, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁹ Although the handling of disciplinary actions, the assignment of work duties and the management of leave requests and training matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁰ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹

Appellant submitted a July 29, 2004 decision of a DRT of the employing establishment which resolved his grievance concerning the events on February 18, 2004. The DRT found that Mr. McCann "acted inappropriately when he threatened the grievant with termination" and stated that "[i]nappropriate and unprofessional behavior, of the nature in this case, crosses the line from simple unprofessionalism to a violation of the [j]oint [s]tatement." In reaching this determination, the DRT cited portions of the Employee Labor Relations Manual and joint statement on violence and behavior in the workplace, which generally indicated that employees should treat each other with respect and that front-line supervisors should maintain an

⁸ *Id.*

⁹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁰ *Id.*

¹¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

atmosphere between the employer and employees which assures mutual respect for each other's rights and responsibilities. The DRT did not, however, cite to any regulation which specifically stated that Mr. McCann, in his role of supervisor, could not ask for appellant's identification badge and tell him that he would be terminated after returning to the post office with undelivered mail.¹² Therefore, appellant has not submitted sufficient evidence to show that Mr. McCann committed error or abuse on February 18, 2004 or otherwise acted improperly in carrying out disciplinary actions. He also did not submit any evidence showing that the employing establishment committed error or abuse in carrying out the administrative functions of canceling his delivery route, denying his leave or assigning him remedial training. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that Mr. McCann's actions on February 18, 2004 constituted harassment and discrimination. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹³ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁴ Appellant alleged that Mr. McCann told him "I am going to terminate you" and asked for his identification badge. As noted above, the record does not clearly establish that these acts constituted an improper abuse of a supervisor's disciplinary powers. Appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by Mr. McCann.¹⁵ For example, he did not submit witness statements showing that Mr. McCann used abusive language or otherwise acted in a manner which would be considered harassment or discrimination under the Act.¹⁶ The Board has recognized the compensability of verbal altercations or abuse in certain circumstances, but this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁷ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

¹² The determinations of other administrative agencies, while instructive, are not binding on the Office or the Board with respect to whether an individual is disabled under the Act. *See Henry C. Garza*, 52 ECAB 205 (2001).

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁶ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁷ *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

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.¹⁸

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs September 23 and July 27, 2004 decisions are affirmed.

Issued: April 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).