United States Department of Labor
Employees' Compensation Appeals Board

JOHN J. DANIELS, Appellant	)	
and	)	**Docket No. 04-1728**
	)	**Issued: February 3, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Naples, FL, Employer	)	

Appearances:
John J. Daniels, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated November 17, 2003 and June 9, 2004 which denied his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 4, 2002 appellant, then a 52-year-old rural carrier, filed an occupational disease claim alleging that on October 22, 2002 he developed stress and anxiety after experiencing a continuing pattern of harassment by management. He stopped working on November 9, 2002 and did not return.

Appellant submitted a statement and alleged that his supervisors harassed him by subjecting him to a second mail count on September 17, 2002 after a mail count had been performed in February 2002. He also alleged that on October 4, 2002 he was wrongfully investigated regarding the mail count of September 2002. Appellant indicated that his supervisor did not promptly disclose the results of the mail count. He alleged that he was improperly disciplined and provided with a notice of removal on October 22, 2002 and placed on administrative leave. Finally, appellant alleged that, on October 24, 2002, while on administrative leave, he was not permitted on employing establishment property to meet with his union steward.

The employing establishment submitted a December 20, 2002 letter noting that appellant's claim was based on his reaction to administrative actions.

By letter dated January 10, 2003, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents that he believed contributed to his claimed illness, and a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed emotional condition.

Appellant submitted statements dated January 14 and February 5, 2003 which reiterated the allegations set forth above and noted that his request to be excused from the mail count was denied. Appellant came under the treatment of Dr. James B. Boorstin, a Board-certified psychiatrist and neurologist, who noted in reports dated November 8, 2002 to March 5, 2003 that he has treated appellant for work-related stress and advised that appellant could not return to work.

The employing establishment submitted a notice of proposed removal dated October 2002 which was based on the results of the mail count of September 17, 2002 which revealed that appellant misrepresented the duties he performed and the mail he processed. Also submitted was a settlement agreement dated October 8, 2002 noting that the proposed removal would be reduced to a 30-day suspension without pay for the period November 9 to December 8, 2002. Also submitted were statements from appellant's supervisor, Frank Mee, dated December 26, 2002 and January 10, 2003, who advised that appellant's rural carrier national union contract required his mail to be counted yearly. Although appellant requested that he be excused from the mail count, it was not within management's authority to excuse him as all rural carriers were required to be counted under the national agreement. In a letter dated January 24, 2003, Mr. Mee indicated that appellant had been assigned his route for over a year. Appellant was evaluated at nine and a half hours daily in the winter which he completed in six and one half hours or less and was evaluated at eight and one half hours per day in the spring which he completed in three and one half hours to five hours. He noted that appellant was not given any additional work, was not required to work overtime or to travel, and was not subject to a mail processing quota. Mr. Mee noted that appellant was able to perform his required duties without problem and his conduct was acceptable. He advised that the only problem was the falsification of appellant's most recent rural count in September 2002 for which appellant was disciplined. In an undated statement, he noted that the mail count of September 2002 revealed

that appellant could not verify the accountable items which affected his route evaluation and which resulted in an infraction.

In a June 24, 2003 decision, the Office denied appellant's claim finding that the evidence did not show that the claimed emotional condition occurred in the performance of duty.

By a letter dated December 3, 2003, appellant requested a review of the written record.

The employing establishment submitted a letter from Mr. Mee dated November 3, 2003 who noted that appellant's route was counted and adjusted as set forth in the rural carriers national agreement. The mail counts and adjustments were done in the spring and fall because the area was seasonal and the routes were adjusted during the heavy times so that the mail carriers could handle the increase in volume and deliveries. Mr. Mee noted that as station manager he was responsible to coordinate all counts and surveys and to ensure the accuracy of the count. He indicated that during the September 2002 count mail processing figures were inflated and appellant's route was adjusted accordingly.

By decision dated November 17, 2003, the hearing representative affirmed the decision of the Office dated June 24, 2003.

In an undated letter, appellant requested reconsideration. He noted that he had filed four successful grievances. Appellant indicated that he had no history of discipline in his six years of employment. He indicated that his mail route was the only route counted of 26 existing routes. Also submitted were reports from Dr. Boorstin dated January 27 and April 22, 2004 who diagnosed severe chronic depression and opined that appellant's condition was directly related to his former work environment. Appellant's statement dated May 21, 2004 noted that he believed the mail count was manipulated by Mr. Mee and indicated that a large number of accountable items were not counted which made his figures look inflated.

The employing establishment submitted letters from Mr. Mee dated April 19 and May 6, 2004 which noted that appellant's route was counted by four individuals who discovered the inflated figures. He noted that route adjustments were made for growth every year in May and November for seasonal routes according to the national agreement with the national rural letter carriers association. Mr. Mee indicated that appellant did not protest the adjustment when it was made. He further noted that appellant was not denied access to his steward but because he was on administrative leave he was instructed to make an appointment with her and she would be made available for consultation.

In a decision dated June 9, 2004, the Office denied modification of the prior decision on the grounds that the evidence submitted was insufficient to establish that appellant sustained an emotional condition in the performance of duty.

LEGAL PRECEDENT

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 contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[1] 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*,[2] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[3] 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 under the Act.[4] 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.[5] 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 under the Act.

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.[6] 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.[7]

To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[8] However, for harassment to give rise to a compensable

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[5] *Lillian Cutler, supra* note 2.

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

[7] *Id.*

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

disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[9]

ANALYSIS

Appellant alleged that he was harassed when his supervisor subjected him to a second mail count on September 17, 2002. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[10] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[11] In the present case, Mr. Mee, the station manager, noted in letters dated December 26, 2002 and January 10, 2003, that the union national agreement with the national rural letter carriers association provided that appellant's mail was required to be counted yearly. In a statement dated November 3, 2003, Mr. Mee noted that the mail counts and adjustments were done in the spring and fall because of the seasonal nature of the area and the routes were adjusted during the heavy times so that the mail carriers could handle the increase in volume and deliveries. He noted that as station manager he was responsible for coordinating all counts and surveys and to ensure the accuracy of the count. Mr. Mee indicated that during September 2002 it was discovered that figures were inflated that could not be verified by appellant and therefore his route was adjusted accordingly which reduced appellant's evaluation rating. Although appellant requested that his mail not be counted, Mr. Mee explained that it was not within management's authority to excuse him as all rural carriers in appellant's situation were required to be counted under the rural carrier nation agreement. In a letter dated January 24, 2003, Mr. Mee indicated that appellant was not given any additional work, he did not work overtime, he was not required to travel, and he was not subject to a mail processing quota. He further noted that appellant was able to perform his required duties without problem. The employing establishment further contended that at no time did management harass appellant or single him out for a mail count. General allegations of harassment are not sufficient[12] and in this case appellant has not submitted sufficient evidence to establish disparate treatment by his supervisor.[13] Although appellant alleged that his manager singled him out for a mail count and engaged in actions which he believed constituted harassment, he provided no corroborating evidence, or witness statements to establish his allegations.[14] Additionally, the employing established has refuted such allegations. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

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[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[10] *See David W. Shirey, supra* note 8.

[11] *Jack Hopkins, Jr., supra* note 9.

[12] *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

[13] *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).

[14] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

Appellant's other allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,[15] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[16]

Appellant alleged that on October 4, 2002 he was wrongfully investigated regarding misrepresentation of accountable items in the mail count of September 2002. However, it appears from the record that during the September 2002 mandatory count it was discovered that facts relating to appellant's mail count had been misrepresented. It was noted that appellant's figures for his mail were inflated, specifically appellant initiated change of address cards for individuals who had previously moved or were expired and that only one card was properly verified. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.[17] Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were unreasonable. Appellant alleged that his supervisor wrongfully investigated him for inflating his accountable items but he provided no corroborating evidence, such as witness statements, to establish that such action was unreasonable.[18] Instead, the employing establishment explained the reasons why it took its actions and denied any disparate treatment of appellant in this regard. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant indicated that his supervisor did not disclose the results of the mail count within in three days of the count. However the Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but

[15] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler, supra* note 2.

[16] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[17] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[18] *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[19] Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus he has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, 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.[20] Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.[21] The record reveals that during the September 2002 mandatory count it was discovered that appellant's figures for his mail accountables were inflated and nonverifiable; specifically, it was noted that appellant initiated change of address cards for individuals who had previously moved or were expired and that only one card was properly verified. As a result, the employing establishment disciplined appellant for this infraction. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations and the employing establishment denied acting improperly. Thus he has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant also alleged that he was denied the opportunity to meet with his union representative on October 24, 2002. However, the record does not substantiate this allegation. Mr. Mee noted that appellant was placed on administrative leave due to a finding that he falsely represented his mail count and reportedly advised appellant to make an appointment with his union steward and that she would be made available to him. He advised that at no point was appellant deprived of consulting with his union representative. There is no evidence supporting that the employing establishment acted unreasonably in this regard.[22]

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.[23]

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[19] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[20] *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).

[21] *Id.*

[22] *Wanda G. Bailey*, 45 ECAB 835 (1994) (no error or abuse by the employing establishment where the evidence did not establish that the employing establishment erroneously denied appellant's requests for time to attend appropriate union meetings where appellant's supervisor denied appellant's allegations and where there was no other probative evidence supporting appellant's contentions).

[23] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2004 and November 17, 2003 decisions of the Office are affirmed.

Issued: February 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member