



a police vehicle and told the officer about what he had seen. Appellant asserted that after lunch he delivered mail on Gibson Street and a woman told him to “min[d] his own business.”<sup>1</sup>

Appellant submitted several March 2003 reports of attending physicians, including reports in which Dr. Brian Low, Board-certified in physical medicine and rehabilitation, diagnosed anxiety and tension headaches.

By decision dated March 19, 2003, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors. The Office determined that appellant had not established that there was an actual threat to his safety.

In a statement dated April 7, 2003, appellant indicated that, at the end of his work shift on February 28, 2003, a bystander at an area marked off by police tape told him that a murder had been committed. It was suggested that the man he saw running earlier in the day was involved in the murder. Appellant indicated that, before he actually learned of the murder, family members of the man looked at him with “threatening face” and told him to mind his own business. Appellant claimed that, after he learned about the murder, he saw “the suspicious guy’s family voice and threatening face.”

Appellant requested a hearing before an Office hearing representative. At the hearing held on November 19, 2003 he provided further details of the incident of February 28, 2003. Appellant asserted that, after he saw the running man, he delivered mail on Gibson Street and encountered a group of several women and one or two men who he assumed were related to the running man. He claimed that they gave him threatening looks and that one of the women told him to mind his own business. Appellant acknowledged that he did not contact the police after he felt that he had been threatened.<sup>2</sup>

By decision dated and finalized February 17, 2004, the Office hearing representative affirmed the March 19, 2003 decision.

In a letter dated April 19, 2004, appellant indicated his disagreement with the hearing representative’s decision and stated, “I almost got killed [a] few times, and I got [threatened] by the customers several times, and I got bit by the dogs 2 times.” He asserted that the area where he delivered mail was a high crime area and alleged that a few weeks prior, a man approached him and told him, “If you get shot next time, don’t try to dodge the bullet, take it with your body.”

By decision dated July 26, 2004, the Office affirmed the February 17, 2004 decision.

### **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

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<sup>1</sup> Appellant did not stop working for the employing establishment.

<sup>2</sup> Appellant’s attorney testified that appellant sustained an emotional reaction in response to being threatened by the individuals on Gibson Street rather than seeing the man running away.

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<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

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that he sustained an emotional condition in response to being threatened by several individuals at work on February 28, 2003. He indicated that, while he was eating lunch at work, he saw a man running into a grass field and told a police officer about what

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>5</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

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

<sup>8</sup> *Id.*

he had seen. Appellant asserted that, when he was delivering mail after lunch on Gibson Street, a group of several women and one or two men gave him threatening looks and one of the women told him to mind his own business. He later learned that a murder had been committed and stated his belief that the running man was involved in the murder and the individuals that threatened him were relatives of that man.

The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances.<sup>9</sup> However, appellant has not established that he was threatened at work on that day. His assertions regarding being threatened at work on February 28, 2003 must be considered vague and equivocal. Appellant claimed that a woman on his mail route told him to mind his business, but is unclear how this particular statement, even if established as having been made, would rise to the level of a threat. He assumed that a group of women and men he encountered on Gibson Street, including the woman he alleged spoke to him, were relatives of a man that he felt had been involved in a crime. However, appellant did not provide any evidence to establish that any of these assumptions were, in fact, true.<sup>10</sup> He indicated that the individuals gave him threatening looks, but his mere perception of the demeanor of these individuals does not establish that a threat was made against him. Appellant did not submit any evidence to support his allegations such as police reports or witness statements.<sup>11</sup>

Appellant generally indicated that he felt unsafe working in what he felt was a high crime area. The Board has recognized that unsafe work conditions can constitute a factor of employment.<sup>12</sup> However, for the reasons explained above, appellant has not established that he was endangered while in the performance of his federal employment. Under these circumstances, the Board finds that appellant's emotional reaction must be considered self-generated in that it resulted from his perceptions regarding his work environment.<sup>13</sup>

For the foregoing reasons, appellant has not established a compensable employment factor under the Act. Therefore, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>14</sup>

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<sup>9</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>10</sup> Appellant did not establish that a murder had in fact taken place. He did not assert that he witnessed any act of violence or the direct effects of any act of violence. Therefore, appellant's circumstance was not similar to cases where an employee witnessed violence or its aftermath. See *Larry J. Thomas*, 44 ECAB 291 (1992) (finding an employment factor when a mail carrier encountered the body of a suicide victim on his route).

<sup>11</sup> Appellant generally alleged that he was almost killed a few times, was threatened by customers several times, and was bitten by dogs two times. However, he did not provide any further details about these alleged incidents. He also claimed that a man approached him and told him, "If you get shot next time, don't try to dodge the bullet, take it with your body." Appellant did not identify the time, place or circumstances of this allegation or otherwise provide supporting evidence to document its occurrence.

<sup>12</sup> See *Peggy Ann Lightfoot*, 48 ECAB 490, 494 (1997).

<sup>13</sup> *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

<sup>14</sup> 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).

**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' decisions dated July 26 and February 17, 2004 are affirmed.

Issued: June 20, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member