

**United States Department of Labor
Employees' Compensation Appeals Board**

GASTON RAY WEATHERS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hugo, OK, Employer**

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**Docket No. 05-386
Issued: June 10, 2005**

Appearances:
C.B. Weiser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 19, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated November 19, 2004, in which the Office denied his claim that he sustained an emotional condition in the performance of duty. Pursuant to 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 met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment.

FACTUAL HISTORY

On February 13, 2002 appellant, then a 53-year-old window clerk, filed a Form CA-2 recurrence claim, alleging that he sustained a recurrence of a September 13, 1999 employment injury on December 18, 2001. He had stopped work on January 17, 2002. Appellant contended that he was continuously harassed by the postmaster, Kenneth W. Braddock, which caused severe headaches. In an attached statement, appellant stated that Mr. Braddock began harassing

him immediately upon his return to work following a prior accepted injury,¹ by demanding that he not talk with customers, accusing him of taking money and stamp stock and belittling him in front of coworkers.

In a February 14, 2002 statement, appellant's brother and coworker Gerald Weathers, advised that he had witnessed Mr. Braddock's abusive and harassing treatment of appellant, including that he would stand over appellant's shoulder and raise his voice at appellant. Mr. Weathers specifically stated that Mr. Braddock changed the policy regarding making change to harass appellant and treated no other employee the way he treated appellant. J.N. Rhodes, a retired coworker, provided a February 14, 2002 statement in which he reported that appellant was humiliated and harassed daily as he performed his work duties, including getting stamps and currency and requesting that appellant not talk with customers. He stated that in one instance appellant had to count his drawer three times.

Appellant also submitted disability slips and a report dated September 14, 2001 in which Dr. Ted R. Rowland, his attending Board-certified family practitioner, noted appellant's history of severe headaches and that he had been off work for several years due to a stressful work environment but could return to work. In a February 12, 2002 report, Dr. Rowland diagnosed headaches, anxiety and depression and advised that appellant could not work.

A memorandum to file advised that the case would be adjudicated as a new injury rather than a recurrence because appellant was alleging that new factors caused his condition. Mr. Braddock submitted a number of statements in which he countered appellant's contentions and the statements made by appellant's brother and Mr. Rhodes. Mr. Braddock stated that, after being off work for 16 months, appellant returned on September 28, 2001 and was instructed in new policies that had been instituted in appellant's absence² and that he had instituted a new policy regarding currency maintenance. He advised that no grievances had been filed against him during his tenure at the employing establishment and submitted a diary, which covered the period September 28, 2001 to January 31, 2002.

The employing establishment also submitted statements from 11 employees who generally provided character references for Mr. Braddock, advising that they had witnessed no harassment or mistreatment.³

By letters dated July 17, 2002, the Office informed appellant of the type evidence needed to support his claim and requested that the employing establishment furnish information regarding his allegations.

In response, appellant submitted a statement in which he reiterated his contentions, stating that upon his return to work Mr. Braddock demanded that appellant not talk with

¹ The record indicates that the Office previously accepted that appellant sustained an employment-related headache condition.

² Mr. Braddock attached a copy of the policies.

³ Mr. Braddock advised that he did not read these statements which, he stated, were placed in sealed envelopes.

customers, inappropriately made him watch a film about getting along with others and generally “yelled, screamed, humiliated and threatened me over and over again.” He also submitted an August 5, 2002 report in which Dr. Rowland diagnosed headaches, anxiety, depression, memory lapses, gastritis and chest pain and opined that these were a direct result of appellant’s work environment.⁴

By decision dated October 23, 2002, the Office denied the claim, finding that appellant had not established that he sustained harassment in the performance of duty. He timely requested a hearing, that was held on July 28, 2003. At the hearing, appellant and his wife testified regarding his contentions, additionally claiming that Mr. Braddock had made inappropriate comments about Jews, changed his hours and would ask him to go to the bank on his lunch break. He stated that he complained to the union which would not file a grievance.

Appellant also submitted a November 20, 2002 report in which Dr. Rowland reiterated his diagnoses and conclusions and stated that appellant could not work because of his debilitated state and medication. Subsequent to the hearing, appellant submitted a report dated August 11, 2003 in which Dr. Eric Broadway, a Board-certified psychiatrist, diagnosed panic disorder with agoraphobia, major depressive disorder, recurrent, severe, post-traumatic stress disorder and headaches and opined that these were related to appellant’s work experience, noting a history that “sounds like” he was terrorized, harassed and picked on at the workplace.

Mr. Braddock responded to the hearing transcript, disagreeing with appellant’s contentions and advising that he had treated appellant as he treated all other employees. He explained that he had changed the policy regarding issuing change for all, that all were required to watch an “attitude” video and that he never yelled. He also submitted statements from former managers, who attested to his character and advised that they had problems with appellant and his brother.⁵

Appellant submitted a statement in which he responded to Mr. Braddock’s statement and reiterated his contentions and a September 5, 2003 statement in which Mr. Rhodes generally supported appellant’s contention that he had been harassed.⁶

By decision dated October 21, 2003, an Office hearing representative affirmed the prior decision, finding that appellant failed to establish that he was harassed or mistreated by Mr. Braddock in any way and thus failed to establish that he sustained an emotional condition in the performance of duty. The hearing representative found that the statements submitted by appellant were more than offset by those submitted by the employing establishment and found that appellant’s hearing testimony was not credible. On October 20, 2004 appellant, through his attorney, requested reconsideration, arguing that the claim should have been adjudicated as a recurrence of appellant’s 1999 employment injury and that the hearing representative erred in

⁴ Appellant also submitted medical records, statements and an Office decision dated August 8, 2001 regarding a prior claim.

⁵ Mr. Braddock also submitted witness statements that had been provided for appellant’s previous claim and appellant’s leave analysis and schedule assignments.

⁶ Appellant submitted additional evidence pertaining to his prior claim.

relying on old statements and in rejecting appellant's witness statements which established that appellant sustained a recurrence of disability. In a decision dated November 19, 2004, the Office denied modification of the prior decision.

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.⁷

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*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁹ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.¹⁰ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.¹²

In emotional condition claims, 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. 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

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ 28 ECAB 125 (1976).

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *See Robert W. Johns*, 51 ECAB 137 (1999).

¹¹ *Lillian Cutler*, *supra* note 8.

¹² *Kim Nguyen*, 53 ECAB 127 (2001).

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.¹³

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the Acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. The issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁴

With regard to emotional claims arising under the Act, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under the Act, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁵

ANALYSIS

In the present case, appellant has not attributed his emotional condition to the performance of his regular duties as a window clerk or to any special work requirement arising from his employment duties under the *Cutler* standard. Rather, appellant’s claim pertains to allegations of harassment and abuse by Mr. Braddock, the postmaster. The Board finds, however, that appellant has not submitted sufficient evidence to establish his allegations of harassment or abuse.

The statements submitted by family members, Mr. Rhodes and other employees in appellant’s behalf are of limited relevance to establishing his claim as they merely comment generally on appellant being harassed but provide few specifics describing the actual time, place or occurrence of events which they deem exhibit harassment by Mr. Braddock. The Board therefore finds these statements insufficient to establish appellant’s allegations of harassment and abuse.¹⁶ Mr. Braddock provided several statements in which he advised that policy changes had been made, which pertained to all employees and in no way singled out appellant. These included the new general window clerk policies and his policy regarding management of currency. He also indicated that all employees watched the video on employee attitudes. The record is also replete with statements from workers at the employing establishment and former managers that attest to Mr. Braddock’s character and managerial skills. The Board also finds

¹³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁴ *James E. Norris*, 52 ECAB 93 (2000).

¹⁵ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹⁶ *James E. Norris*, *supra* note 14.

probative the fact that the union would not file a grievance in appellant's behalf. For these reasons, the Board finds that appellant has not established as factual a basis for his perceptions of harassment and abuse by Mr. Braddock after September 2001.

Inasmuch as appellant failed to implicate a compensable employment factor, the Office properly denied her claim without addressing the medical evidence of record.¹⁷

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 19, 2004 be affirmed.

Issued: June 10, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁷ *Garry M. Carlo*, 47 ECAB 299 (1996).