

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

JONATHAN A. DE'KELAITA, Appellant)	
)	
and)	Docket No. 04-2233
)	Issued: March 11, 2005
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA Employer)	
)	

Appearances:
Jonathan A. de'Kelaita, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 13, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 4, 2004, denying modification of a February 26, 2004 decision which denied his emotional condition claim. 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 has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 20, 2003 appellant, then a 68-year-old tractor trailer operator on modified duty, filed a traumatic injury claim alleging that on November 5, 2003 Ozell Shaffer, his supervisor, verbally attacked him, and physically approached him with hostility. Appellant alleged that he sustained an acute distress disorder. Jerome Pittman, a coemployee, advised that on November 5, 2003, while appellant was working at the counter, Mr. Shaffer told him to make sure that a certain driver received a certain truck. Mr. Pittman noted that appellant replied that

he knew about the truck assignment and a heated argument ensued, causing him to separate both individuals. He advised that appellant was taken to another room to calm down, as he was shaking. Mr. Pittman indicated that Mr. Shaffer came in and ordered appellant to go to the nurse immediately, and another argument occurred, after which he took appellant to the nurse. Appellant stopped work on November 5, 2003.

Accompanying appellant's claim, were reports dated November 13 and 25, 2003 and January 6, 2004, from Dr. Robert A. Kaplan Ph.D. a clinical psychologist. He advised that appellant related the incident of November 5, 2003 in which Mr. Shaffer put his face in appellant's face and threatened him with violence. Dr. Kaplan diagnosed acute stress disorder. Appellant also submitted treatment notes dated November 5 and 7, 2003 from Kaiser Permanente.

In a letter dated January 21, 2004, the Office advised appellant that the evidence submitted was insufficient to establish his claim and requested that he submit additional supportive factual and medical evidence.

In a November 5, 2003 statement, Lawrence Handy, an employee, alleged that, at approximately 9:00 a.m., Mr. Shaffer and appellant had an argument over holding an assigned truck for a driver.

In a November 5, 2003 statement, Ronnie Crawford, a clerk, noted that Mr. Shaffer told appellant to give a driver a certain truck and when he refused, Mr. Shaffer ordered that appellant do so. He alleged that appellant would not comply and wanted Tammy Parris, another supervisor, to tell him to do it or he wanted to talk to her. Mr. Crawford stated that Mr. Shaffer advised appellant that he had the authority to tell appellant what to do since he was his supervisor. Appellant then stated that he was going to see the nurse and Mr. Shaffer indicated that appellant needed a pass. Mr. Pittman stopped appellant from leaving without a pass and advised that appellant should take a 30-minute break and left with appellant.

In a statement dated November 24, 2003, Mr. Shaffer noted that, on November 5, 2003, at approximately 8:00 a.m., he walked over to the clerk's desk and requested that appellant "make sure that Mr. Chirip got his assigned truck." He alleged that appellant responded by asking, "are you saying I don't know how to do my job?" Mr. Shaffer advised appellant that he did not want to hear that and appellant indicated that he would talk to Ms. Parris about that. Mr. Shaffer told appellant that Ms. Parris did not run the Office. He advised appellant to take a 30-minute break. He related that appellant then alleged that he was not feeling well, so he gave appellant a "7020 to go to the Medical Unit." Mr. Shaffer indicated that, approximately 10 or 15 minutes later, he heard loud laughing coming from the room in the back and when he opened the door he saw Mr. Syas, appellant and Mr. Pittman sitting around the table laughing. At that time, he advised appellant that he was supposed to be at the medical unit. He alleged that appellant jumped up, came at him and pointed his finger in his face and stated that he was not going to do anything. Mr. Pittman told appellant not to refuse to go because he could get in trouble.

In a February 12, 2004 statement, R.A. Creer, Jr., an employee, noted that on November 5, 2003 appellant was working at the counter and placing truck keys out for incoming drivers. Mr. Shaffer approached appellant regarding the assignment of a certain truck for a

driver with a medical condition. Mr. Creer alleged that a disagreement ensued between appellant and Mr. Shaffer and that both parties were adamant regarding their position. He stated that Mr. Shaffer ordered appellant to follow his instructions and appellant responded by saying that he worked for "Tammy." Mr. Creer noted that Mr. Shaffer advised appellant that he was appellant's supervisor. Mr. Creer stated that appellant became upset and agitated as the argument continued and Mr. Pittman came over to take appellant to the break room, in order to diffuse the situation and calm appellant. Mr. Creer noted that shortly afterwards, Mr. Shaffer went into the break room and sent appellant to the medical unit. Mr. Creer noted that appellant appeared distraught as he left.

Appellant submitted a February 17, 2004 statement, several witness statements and a February 19, 2004 report from Dr. Kaplan. He alleged that Mr. Shaffer had problems getting along with him. Appellant related that on November 5, 2003 Mr. Shaffer approached him and told him that one of the drivers needed a certain truck for medical reasons. He advised Mr. Shaffer that he was aware of this and that everything was under control. Appellant alleged that Mr. Shaffer did not listen to him and demanded that he "take over" and would show appellant how to do the job. He alleged that Mr. Shaffer began to perform certain duties and forced appellant to watch him. Appellant alleged that Mr. Shaffer was making a "mess" of things and headed toward the break room. Mr. Shaffer then came after him, screaming at him, telling him that he was not doing a good job and did not know what he was doing. Appellant began to feel ill and that Mr. Shaffer yelled at him to go to the medical unit. He alleged that he worked in a hostile environment for over a year, with Mr. Shaffer being abusive, threatening and verbally assaultive on multiple occasions. He alleged that on March 20, 2003 Mr. Shaffer "screamed" at him for going to the restroom and accused him of leaving without permission. On April 11, 2003 he called in sick and, when he returned the next day, Mr. Shaffer screamed at him, stating that appellant should have told him that he was coming in. Mr. Shaffer also threatened appellant verbally and physically. Appellant alleged that, on another occasion, he was using the copy machine, when Mr. Shaffer "pushed" him from the machine and tore his papers out of the machine. He alleged that Mr. Shaffer often screamed and yelled at him while he was on break, accusing him of taking long breaks.

In a February 17, 2004 statement, Mr. Gessner, an employee, stated that on November 5, 2003 Mr. Shaffer entered the break room and demanded that appellant go to the nurse's office. He further indicated that he had to step in between Mr. Shaffer and appellant because Mr. Shaffer was "hollering" at appellant.

In an undated statement received by the Office on February 23, 2004, Mr. Pittman stated that on November 5, 2003 he was working in the dispatcher office where appellant was working the counter and handing out keys to vehicles. Mr. Shaffer was sitting at a desk. Mr. Pittman stated that they started a "conversation" about truck assignments which became "heated" and loud. Mr. Pittman stated that he tried to defuse the situation by pulling appellant away because he was upset. He advised that Mr. Shaffer told appellant to go to the nurse's office. Mr. Pittman indicated that he accompanied appellant to the back room where Mr. Shaffer "busted in" and demanded that appellant leave the office and go to the medical unit. Mr. Pittman noted that he accompanied appellant to the medical unit.

In a February 12, 2004 statement, Lawrence Handy, an employee, indicated that on November 5, 2003 he was working in the office when Mr. Shaffer verbally attacked appellant, and caused him to become upset. Mr. Handy also stated that he had witnessed Mr. Shaffer screaming at appellant and acting abusively towards him on several occasions.

In a February 12, 2004 statement, Eric Mitchell, an employee, alleged that it was the policy of the employing establishment for employees to return to work without calling in, after being off for a couple of days.

In a February 26, 2004 decision, the Office found the evidence insufficient to establish that appellant sustained an emotional condition in the performance of duty. The Office accepted as factual that appellant had a verbal exchange with his supervisor on November 5, 2003; however, the Office determined that the evidence did not establish error or abuse by the supervisor in the administrative action.

By letter dated March 2, 2004, appellant requested reconsideration and provided copies of reports, which were previously received by the Office.

In a March 15, 2004 report, Dr. Kaplan advised that appellant was on total temporary disability since he was verbally assaulted by his supervisor on November 5, 2003 and diagnosed a post-traumatic stress disorder. He advised that appellant could return to work on May 15, 2004. In an April 26, 2004 report, Dr. Kaplan repeated his previous history and opined that appellant continued to exhibit severe symptoms and would be unable to return to work on June 15, 2004.

By decision dated June 4, 2004, the Office denied modification of the February 26, 2004 decision. The Office also noted that appellant had described several incidents between himself and Mr. Shaffer that were not declared as part of the original traumatic injury claim. Appellant was advised that these would be considered under an occupational disease claim; however, since appellant had not filed an occupational disease claim, they would not be considered under the present.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.¹

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.³

ANALYSIS

Appellant alleged that he sustained an emotional condition on November 5, 2003 as a result his interaction with Mr. Shaffer, a supervisor. The Office found that appellant did not establish a compensable employment factor in the performance of duty. The Board must thus, initially review whether the incident constitutes a compensable factors of employment.

Appellant's alleged that a heated argument ensued when Mr. Shaffer approached him on November 5, 2003 and directed him to assign a specific truck to a driver with medical restrictions. The Board notes finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, and do not generally fall within the coverage of the Federal Employees' Compensation Act.⁴ 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether management acted reasonably.⁵

In a statement dated November 24, 2003, Mr. Shaffer explained that on November 5, 2003 at approximately 8:00 a.m., he requested that appellant ensure that Mr. Chirip receive a certain truck assignment. Appellant responded by asking, "are you saying I do n[o]t know how to do my job?" Mr. Shaffer told appellant that he did not want to hear that this morning and appellant stated that he would talk to another supervisor. Mr. Shaffer indicated that appellant continued to argue with him and suggested that appellant should take a 30-minute break. When appellant stated that he was not feeling well, he instructed appellant to go to the medical unit. Mr. Shaffer noted that he subsequently heard loud laughing coming from the break room and observed appellant sitting at a table with other employees laughing. He then advised appellant to

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ 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. *Sandra Davis*, 50 ECAB 450 (1999).

⁵ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

go to the medial unit. Appellant jumped up, approached him and pointed a finger in his face stating that he not going to do anything and at that time. The record contains statements from Mr. Crawford, Mr. Handy, Mr. Pittman and Mr. Creer, who observed Mr. Shaffer instruct appellant to make a certain truck assignment, following which an argument ensued. However, these statements do not establish verbal abuse as alleged by appellant. Mr. Crawford noted that appellant did not comply with Mr. Shaffer's instructions and insisted that another supervisor give him directions. An argument ensued until Mr. Pittman accompanied appellant to the break room. Mr. Shaffer noted that he subsequently heard loud laughter from the break room and, upon investigation noted appellant sitting at a table with several other employees. He directed appellant to go to the medical unit, at which time argument again arose. The Board finds that Mr. Shaffer's request that appellant assign a certain truck for a driver with medical restrictions, did not constitute error or abuse in working an assignment of vehicles to employees.

Although appellant alleged that Mr. Shaffer was abusive, the evidence reflects that he refused the request and an argument ensued in which appellant stated he would take directions only from another supervisor. Verbal altercations when sufficiently detailed and supported by the evidence, may constitute a compensable factor of employment.⁶ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.⁷ Mr. Shaffer directed that appellant perform a certain task and appellant refused the supervisory direction instruction from which the arguments ensued. The witness statements note raised voices but do not provide specifics as to what words were exchanged to allow a detailed account of what was said by either party. The Board has held that the fact was a supervisor or employee may raise his voice during the course of a conversation does not warrant a fining of verbal abuse.⁸ The evidence of record is insufficient to establish verbal abuse such as to constitute a compensable factor of employment.⁹

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.¹⁰

CONCLUSION

The Board finds that appellant has not established a compensable employment factors related to his interaction with me Mr. Shaffer on November 15, 2003. He has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

⁶ *Janet D. Yates*, 49 ECAB 240 (1997).

⁷ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

⁸ *See Carolyn S. Philpott*, 51 ECAB 175, 178 (1999).

⁹ The Office did not adjudicate allegations pertaining to actions by Mr. Shaffer other than on November 5, 2003. This aspect of the claim is not before, the Board on this appeal. *See* 20 C.F.R. § 501.2(a).

¹⁰ *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 4 and February 26, 2004 are affirmed.

Issued: March 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member