

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

QUINCY L. JOHNSON, Appellant

and

**U.S. POSTAL SERVICE, BARTON STATION,
Fresno, CA, Employer**

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**Docket No. 04-2224
Issued: May 5, 2005**

Appearances:
Quincy L. Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 13, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 18, 2004, denying 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 sustained an emotional injury in the performance of duty.

FACTUAL HISTORY

On May 22, 2003 appellant, then a 32-year-old letter carrier, filed a claim, alleging that he sustained an emotional condition due to incidents and conditions at work. Appellant stated that he was constantly stressed from being harassed by Rosemary Masse, his supervisor. He claimed that he was the subject of retaliatory action resulting from his filing an equal employment opportunity (EEO) discrimination claim against the employing establishment

in 1998. Appellant indicated that he first became aware that his claimed condition was caused by conditions of employment on May 5, 2003.

Appellant submitted several documents in support of his claim, including a work excuse dated May 7, 2003 and letters dated May 21 and 28, 2003 from Dr. Richard Blak, a clinical psychologist, stating that appellant was suffering from an industrial psychological injury and was temporarily totally disabled.

On June 2, 2003 the Office notified appellant that the information submitted was insufficient to substantiate his claim and advised him to describe in detail the employment-related incidents he believed contributed to his alleged condition. The Office also instructed appellant to provide corroborative evidence in the form of witness statements and relevant documentation.

On June 12, 2003 the employing establishment controverted appellant's claim, alleging that: management was unaware of any EEO claims filed by appellant; following an August 13, 2002 work-related thumb injury appellant was released to full-duty work with "35 [pounds] weight restriction, no power gripping, able to case mail;" on April 29, 2003 appellant was presented with and accepted a limited-duty job offer based on these restrictions; on May 5, 2003 while being counseled by his supervisor for returning first class mail to the Office, appellant became "very vocal" and stated that he did not have to work if his hand was hurting; and appellant had not returned to work since the afternoon of May 5, 2003.

By letter dated May 5, 2003, appellant's supervisor, Rosemary Masse, reported the incidents of that date. She stated that she met with appellant, a union representative and OIC Soni Sihota to discuss appellant's actions regarding first class mail being brought back to the office from his route the day before. She indicated that 10 minutes into the meeting appellant became "very vocal," stating that he did not have to work if his hand was hurting. Appellant then, reportedly, stood up and walked out of the room, slamming the door behind him. The supervisor stated that the union representative located appellant and reported that he was "stressed out" and was calling his doctor. The supervisor indicated that when she found appellant in the parking lot talking on his cellphone, he told her that he was leaving work to see his doctor, whereupon he was given a "21-day letter" and a form to complete for hours missed on May 5, 2003.

Appellant submitted a 12-page statement dated July 1, 2003 elaborating on his claim. His allegations included being reprimanded for his inability to complete job assignments that are difficult due to "work-related surgeries and permanent impairments;" being confronted with job stability issues and threats of being fired; verbal abuse; being wrongfully terminated; racial discrimination, harassment and cruel and unfair treatment. Appellant stated that on May 5, 2003 he was reprimanded for returning mail to the office and was told that he had to do what the supervisor said whether or not he was hurt. Appellant reported that he became paranoid after he was told by his supervisor that he was being followed to see if he was committing workers' compensation fraud. He alleged that his supervisor told him he was a "bullshitter" and a "lousy worker." Appellant stated his belief that he was the target of unfair treatment as a result of the "global settlement" of his lawsuit against the employing establishment and that his supervisor was baiting him into filing another lawsuit by placing him on a more difficult route. He alleged

that he was taunted and drawn into verbal altercations on the workroom floor and in the supervisor's office daily and that he was reprimanded for doing "a better job" while working at another location. Appellant claimed that he experienced anxiety, loss of sleep, hair loss, chronic fatigue, pain and stress and that he worries about his future employment. He stated that he signed a job offer under duress, in that he was told that if he did not sign it, he would not be paid. Appellant alleged that his supervisor refused to give him help with his work even though he was in pain and that he was left on the street to suffer and that when he returned with undelivered mail, appellant was told he would be considered absent without leave if he failed to report to duty the next day. He claimed that when he was reprimanded in front of witnesses, he had the feeling of wanting to smash something or someone and felt he was having a "nervous breakdown." Appellant stated that he had not filed an EEO action related to this matter.

On April 29, 2003 appellant accepted a limited-duty job offer restricting his lifting and carrying to 35 pounds.

The record contains numerous work excuses, as well as a report dated June 23, 2003 signed by Dr. Blak, in which he stated that "it is consistent with presenting symptoms and reported etiology by the patient, that there is a causal relationship between his interaction with supervisors within his work environment and his psychological disability at this time." His diagnoses included: major depressive disorder recurrent with psychotic features; generalized anxiety disorder; dysthymic disorder; schizoid personality disorder; and occupational stress.

On October 30, 2003 the Office denied appellant's claim, finding that the incidents he believed were responsible for his condition were related to administrative personnel functions of the employer or not accepted as factual.

On April 23, 2004 appellant requested reconsideration of the Office's denial of his claim. In support thereof appellant submitted several witness statements. In a letter dated March 23, 2004, Ken Nunn, president of the union, stated that on April 25, 2003 he spoke to appellant by telephone regarding a dispute involving a "return-to work" report from appellant's doctor. Mr. Nunn indicated that during the conversation, he heard a supervisor "yelling" at appellant to "get off the [tele]phone now or I will place you on emergency placement and fire you." In a letter received by the Office on April 23, 2004, Jesse Dominguez, an EEO representative stated that he attended a meeting with appellant and his supervisor on May 5, 2003, during which the supervisor "kept attacking" appellant, "questioning anything he said." He indicated that appellant became very upset and left the room to call his doctor. The union representative reported that the supervisor informed him that she would require appellant to be cleared by a doctor before he could return to work. He stated his belief that the supervisor "[had] it in for" appellant, as evidenced by a job offer, which required appellant to carry a mail satchel on "the very shoulder he had just had [an] operation on." A letter dated March 25, 2004, from a coworker reflected his opinion that friction existed between appellant and his supervisor.

Appellant also submitted a stipulation of compromise settlement dated October 15, 1998 between appellant and the employing establishment whereby, without admission of liability by the employing establishment, the parties settled their differences. Paragraph 11 of the document states that neither the stipulation of compromise settlement nor any matter contained therein

could be used as evidence of a finding or admission of discrimination or retaliation by the employing establishment or any of its employees.

On June 18, 2004 the Office denied modification of its October 30, 2003 decision, finding that appellant's allegations were unsubstantiated and that there was no evidence that harassment or retaliation had occurred.

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.¹ 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.² Similarly, an employee's emotional reaction to his or her failure to receive a job or promotion does not constitute an injury within the meaning of the Act,³ but rather is considered to be self-generated in that it is not related to assigned duties.⁴ Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁵

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.⁶ 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.⁷

¹ 5 U.S.C. §§ 8101-8193.

² *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004). See also *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Lillian Cutler*, *supra* note 2 at 131.

⁴ *Gregorio E. Conde*, 52 ECAB 410, 412 (2001); see also *Roger Smith*, 52 ECAB 468, 473 (2001).

⁵ *Peter D. Butt Jr.*, 56 ECAB ____ Docket No. 04-1255 (issued October 13, 2004). See also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

⁶ *Cyndia R. Harrill*, 55 ECAB ____ (Docket No. 04-399, issued May 7, 2004); see also *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.⁸ 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.⁹

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of harassment and discrimination on the part of his supervisor. By decision dated October 30, 2003, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated June 18, 2004, the Office denied modification of its October 30, 2003 decision. The Board must therefore initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act. The Board finds that appellant has identified no compensable factors of employment that are substantiated by the record.

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.¹⁰ However, for harassment and 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.¹¹

Appellant alleged that the employing establishment harassed him by reprimanding him in front of witnesses on May 5, 2003 and on other occasions. He alleged that he was taunted and drawn into verbal altercations on the workroom floor and in the supervisor's office daily and that he was reprimanded for doing "a better job" while working at another location. Appellant states that he signed a job offer under duress when his supervisor told him he would not be paid unless he signed. Appellant also generally alleged that the employing establishment engaged in improper disciplinary actions, improperly assigned work duties and unreasonably monitored his work activities. 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 coverage of the Act.¹² The Board has found that administrative or personnel matters will

⁸ See *Lori A. Facey*, *supra* note 2; see also *Norman L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ *Lori A. Facey*, *supra* note 2.

¹¹ *Id.* See also *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *Lori A. Facey*, *supra* note 2.

be considered employment factors where the evidence discloses error or abuse on the part of the employing establishment. However, the Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters.

Appellant has not provided evidence establishing verbal abuse. His claim that his supervisor told him in 2001 that he was a “bullshitter” and “lousy worker” might be a compensable factor under certain circumstances if corroborated. However, the fact that the alleged statement may have engendered offensive feelings in appellant is not dispositive of the issue. The circumstances of each case dictate whether or not a statement is found to constitute verbal abuse or harassment.¹³ In this case, appellant has produced no evidence regarding the context of the alleged statement and no corroborative evidence. Therefore, the Board finds that appellant has not established that the alleged statement is a compensable employment factor. In a witness statement, the union president noted that, during a telephone conversation regarding a “return to work” report from appellant’s doctor, he heard someone “yelling” at appellant to “get off the [tele]phone now” or he would put appellant on emergency placement and fire him. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁴ The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.¹⁵ Another witness stated that the supervisor verbally attacked appellant in a disciplinary meeting by “questioning anything he said.” The techniques employed by a supervisor in examining and disciplining an employee relate to administrative or personnel matters, unrelated to appellant’s regular or specially assigned work duties and do not fall within coverage of the Act and the actions of the supervisor in this case do not rise to the level of error or abuse.

A coworker’s statement that in his opinion friction existed between appellant and his supervisor, was too general to substantiate a claim of harassment. Likewise, appellant’s general allegations of “racial discrimination” and “cruel and unfair treatment” are insufficient to establish a compensable factor under the Act.

Appellant alleged that he experienced anxiety when his supervisor reprimanded him for doing a better job while working at another location. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.¹⁶ In *Georgia F. Kennedy*,¹⁷ the Board, citing the principles of *Cutler*, listed employment factors, which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines. In the instant case, appellant alleged that

¹³ *Cyndia R. Harrill*, *supra* note 6.

¹⁴ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004); *see also Harriet J. Landry*, 47 ECAB 543 (1996).

¹⁵ *Karen K. Levene*, 54 ECAB ____ (Docket No. 02-25, issued July 2, 2003).

¹⁶ *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹⁷ *Id.*

his condition was caused not by the work itself, but rather by his supervisor's criticism of how he performed his work. For this reason, the Board finds that appellant has not established a compensable factor under *Cutler*.

Disabling conditions caused by an employee's fear of termination or frustration from not being permitted to work in a particular environment or to hold a particular position are deemed to be self-generated. Therefore, appellant's feelings of job insecurity, disappointment regarding a route change and paranoia about being followed are not compensable.¹⁸

The record contains an October 15, 1998 agreement between appellant and the employing establishment concerning the settlement of an Equal Employment Opportunity Commission (EEOC) grievance. The agreement explicitly indicated that it was not intended to be construed as an admission of harassment or discrimination on the part of the employing establishment and that no matter contained in the agreement could be used as evidence of a finding or admission of wrongdoing by the employing establishment or any of its employees. Moreover, the agreement is of limited probative value in that appellant has stated that he did not file an EEOC action regarding the matters before this Board.

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. As appellant has not established any compensable employment factors, the Board need not consider medical evidence of record.¹⁹

CONCLUSION

Appellant has failed to meet his burden of proof that he sustained an emotional condition in the performance of duty.

¹⁸ *Roger Williams*, 52 ECAB 468, 473 (2001); see also *Cyndia R. Harrill*, *supra* note 6.

¹⁹ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member