

Charles Murphy. He submitted several brief medical notes in support of his claim. Appellant stopped work on December 8, 2004.¹

The record was supplemented to include several statements from the employing establishment. In two undated statements, Mr. Murray stated that on December 8, 2004 appellant repeatedly ignored his instructions to stop casing mail and to “pull his route down,” that he indicated that he would not be treated different from others and that Mr. Murray then advised appellant that his actions could result in him receiving a letter of removal. Mr. Murray stated that later in the day he again instructed appellant to pull his route down and begin delivering mail, that he responded that he would not do so because he was going to get fired anyway and that appellant then advanced to within eight inches of him and waved his identification badge in his face. He indicated that he advised appellant that he would be absent without leave if he left the building and stated that appellant then left the building.² In an undated statement, Fred Snyder, the postmaster for appellant’s work location, asserted that appellant had a bad temper and often became very aggressive when supervisors instructed him in his work. Mr. Snyder indicated that appellant abandoned his post on several occasions and that he had been disciplined numerous times.

By letter dated January 31, 2005, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted several statements which provided further detail about the incidents and conditions at work which he felt caused his emotional condition. He alleged that management excessively disciplined him, especially during a two-month period when he received seven letters of warning and two letters of suspension. Appellant suggested that he was unfairly blamed for a missing mail scanner and alleged that after this incident Tom Smith and Jim Robinson, both supervisors, told him to watch his back before inspections and stated that management instructed them to give him disciplinary letters after making “nasty remarks” about him. He claimed that, when he went to Mr. Snyder to discuss these disciplinary actions, Mr. Snyder told him that he did not have time to discuss the matter, stated that he was a “joke” and “yelled” at him to get out of his office. Appellant stated that his union representative “put out his hands as if to stop me” and that he told him not to grab at him because he was not being violent. He generally asserted that supervisors spoke to him in an inappropriate manner, but acknowledged that he did not always respond “in the best way.”

Appellant claimed that on December 8, 2004 Mr. Murray instructed him to stop casing mail despite the fact that other carriers were not told to stop casing the same kind of mail and asserted that Mr. Murray responded in a loud voice when he asked why he was treated differently. He alleged that he responded in a voice as loud as Mr. Murray’s and asserted that Mr. Murray came into his work space and “got into my face in a provoking manner continuing to yell.” Appellant claimed that he walked towards the restroom to get away from the situation but

¹ Appellant initially indicated that the injury occurred only on December 8, 2004 but later alleged that it occurred over a period of time.

² The record also contains a similar account of the events of December 8, 2004 that Mr. Murray prepared on January 10, 2005.

that Mr. Murray followed him and told him that he would be charged with being absent without leave and then would be fired.

Appellant alleged that Mr. Smith told him to remove his radio from the building despite the fact that coworkers were allowed to keep their radios. He claimed that since he successfully bid on a new mail route, Mr. Snyder, Mr. Smith and Anita Clise, another supervisor, unfairly told him that he was not a good mail carrier. Appellant alleged that on one occasion Mr. Snyder admonished him for talking on his wireless telephone despite the fact that he was on his break and other employees were on their wireless telephones. He claimed that on an unspecified date Mr. Robinson told him that he would not need to work the amount of overtime he marked on his overtime slip and asserted that he felt threatened when Mr. Snyder came into his work space, yelled at him, waved an overtime slip in his face and told him that he would be disciplined. Appellant claimed that on April 11, 2003 Ms. Clise harassed him in a loud and offensive manner regarding the completion of an overtime slip. He alleged that she replied sarcastically "it's all in your head" after he claimed that he was being discriminated against and that he responded to her in an equally loud and sarcastic voice. Appellant claimed that Ms. Clise later came back to his work space and nudged his left shoulder three times with her hand. He indicated that he then "yelled at her don't ever touch me again and don't put your hands on me again."

Appellant claimed that over the past one and a half to two years he had received about 10 letters of warning, 2 letters of suspension and numerous verbal warning. He asserted that many of these actions were unwarranted and that coworkers who did the same things were not disciplined. Appellant claimed that he was unfairly denied incidental leave for his wedding despite the fact that he made the request 30 days in advance. He alleged that supervisors stated that he was a bad mail carrier in front of his coworkers and created a negative image of him by telling his coworkers that he was the reason they had to perform overtime work and work on their off days. Appellant alleged that two postal inspectors falsely accused him of lying about his compensation claim and tried to intimidate him into withdrawing the claim and asserted that the employing establishment improperly failed to approve his compensation claim for continuation of pay.

Appellant submitted a February 25, 2005 statement in which Stefon Oliver, a union representative, asserted that he had witnessed him being subjected to bias and mistreatment and alleged that he had been singled out and disciplined on a discriminatory basis. Mr. Oliver asserted that management had created a "hostile work environment" by talking to coworkers about appellant and blaming him for the fact that the coworkers had to perform overtime work and work on their off days. He stated, "There has [sic] also been stare downs and verbal confrontation by the postmaster [and] verbal threats of removal by numerous supervisor[s] for not working as fast as they think he should work."

In a February 24, 2005 statement, Becky Robertson, a coworker, asserted that a supervisor told her that appellant had a "bad attitude" and indicated that he told appellant what the supervisor had said and he responded that management was going to fire him. In an undated statement, Michael Ruffin, a coworker, stated that on several occasions he had observed Mr. Smith and Mr. Snyder treat appellant differently than other employees by subjecting him to the "constant in your face approach," "yelling" at him while he performed his duties and creating a "bad working environment." In an undated statement, Ronald Eddings, a coworker, indicated

that on December 8, 2004 he witnessed appellant and Mr. Murray “arguing by the time clock” and that appellant “was visibly upset and left the building.” In an April 14, 2003 statement, Michael Thompson, a coworker, asserted that on April 11, 2003 he heard appellant state, “Don’t put your hands on me again.”

Appellant also submitted additional medical reports and documents indicating that he filed an Equal Employment Opportunity (EEO) claim regarding management’s denial of his leave request in January 2005.

The record also contains January 20 and 25, 2005 reports in which postal inspectors memorialized their discussions with appellant about his December 2004 request for leave and the December 8, 2004 incident with Mr. Murray. Appellant provided an account of the December 8, 2004 incident which was similar to the account he provided in the statement he submitted for the present claim. The report indicates that Mr. Murray advised the inspectors that appellant’s leave request was denied because employee coverage during the busy holiday season was insufficient.

By decision dated June 27, 2005, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors.

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.³ 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.⁴

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.⁵ 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.⁶

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

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

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.⁷ 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.⁸

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated June 27, 2005, 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 claimed that he was harassed on December 8, 2004 when Mr. Murray, a supervisor, instructed him to stop casing mail despite the fact that other carriers were not told to stop casing the same kind of mail. He asserted that Mr. Murray then yelled at him, came into his work space "in a provoking manner" and then followed him as he walked away and told him that he would be fired. Appellant alleged that he was unfairly singled out for disciplinary action and asserted that, when he went to Mr. Snyder, the postmaster, to discuss these matters, Mr. Snyder told him that he did not have time to discuss the matter, stated that he was a "joke" and "yelled" at him to get out of his office. He claimed that on another occasion Mr. Snyder came into his work space, yelled at him, waved an overtime slip in his face and told him that he would be disciplined. Appellant asserted that on April 11, 2003 Ms. Clise, a supervisor, harassed him in a loud and offensive manner regarding the completion of an overtime slip and then nudged his left shoulder three times with her hand. He alleged that supervisors stated that he was a bad mail carrier in front of his coworkers and created a negative image of him by telling his coworkers that he was the reason they had to perform overtime work and work on their off days.

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.⁹ However, for harassment or 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.¹⁰ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his

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

⁸ *Id.*

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

supervisors.¹¹ Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided insufficient corroborating evidence, such as probative witness statements or the results of grievances, to establish that the statements actually were made or that the actions actually occurred.¹²

Appellant submitted a February 25, 2005 statement in which Mr. Oliver, a union representative, asserted that he had witnessed him being subjected to verbal threats and discrimination by supervisors, but this statement is of limited probative value because Mr. Oliver did not provide any specifics of these alleged actions. He asserted that managers talked to coworkers about appellant and blamed him for the fact that the coworkers had to perform overtime work and work on their off days, but he did not detail the particular instances that this occurred or the individuals who were present. In an undated statement, Mr. Ruffin, a coworker, stated that on several occasions he had observed Mr. Snyder and Mr. Smith, supervisors, treat appellant differently than other employees by subjecting him to the “constant in your face approach” and yelling at him. However, Mr. Thompson also provided no specific instances of these alleged events. One coworker indicated that on April 11, 2003 he heard appellant state, “Don’t put your hands on me again,” but the coworker did not indicate that he observed who appellant was talking to or what occurred before he made the statement. Another coworker stated that on December 8, 2004 appellant was seen arguing with Mr. Murray. These brief statements are lacking in detail and would not show that the employing establishment committed any wrongdoing on these dates.¹³ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant claimed that over the past one and a half to two years he had received about 10 letters of warning, 2 letters of suspension and numerous verbal warning. He asserted that many of these actions were unwarranted and that coworkers who did the same things were not disciplined. Appellant claimed that he was unfairly denied incidental leave for his wedding despite the fact that he made the request 30 days in advance and asserted that he was unfairly admonished for having a radio and using a wireless telephone. He alleged that supervisors heavily monitored his work and criticized him in his work space on numerous occasions, but did not monitor and criticize other employees to the same extent.

Regarding appellant’s allegations that the employing establishment engaged in improper disciplinary actions, unfairly critiqued and evaluated his job performance, wrongly denied leave, and unreasonably monitored his activities at work, 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.¹⁴ Although the handling of

¹¹ 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).

¹² See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹³ Ms. Robertson, a coworker, asserted that a supervisor told her that appellant had a “bad attitude,” but appellant was not present at the time of this comment and it is unclear how such a comment would constitute harassment.

¹⁴ 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).

disciplinary actions, evaluations, leave requests and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁵ 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 on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁶

Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. He filed an EEO complaint regarding management's denial of a leave request, but the record does not contain any documents detailing the outcome of this or any other complaint.¹⁷ The record contains statements from employing establishment officials that appellant frequently ignored rules and became aggressive when receiving work instructions. Thus, he has not established a compensable employment factor under the Act with respect to administrative matters.

Regarding appellant's allegations that the employing establishment wrongly denied continuation of pay for lost work, the Board has generally found that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.¹⁸ Although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee and thus, not compensable absent evidence of error or abuse by the employer.¹⁹ Appellant has not shown that the employing establishment engaged in any wrongdoing by denying his request for continuation of pay.²⁰

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.²¹

¹⁵ *Id.*

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

¹⁷ The record contains a statement which indicates that appellant's leave request was denied because employee coverage during the busy holiday season was insufficient.

¹⁸ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

¹⁹ See *Terry L. Ross*, 53 ECAB 570, 577 (2002).

²⁰ Appellant also alleged that two postal inspectors falsely accused him of lying about his compensation claim and tried to intimidate him into withdrawing the claim. However, he did not submit any evidence to support this claim.

²¹ 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' June 27, 2005 decision is affirmed.

Issued: November 4, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board