United States Department of Labor
Employees' Compensation Appeals Board

EDWARD L. GERWE, Appellant	)	
and	)	**Docket No. 06-181**
	)	**Issued: April 11, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Longboat Key, FL, Employer	)	

Appearances:
Dean Albrecht, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 2, 2005 appellant filed a timely appeal of the May 4, 2005 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of his claim for an employment-related emotional condition and the October 6 and September 6, 2005 decisions denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied appellant's request for a review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 29, 2003 appellant, then a 48-year-old letter carrier, filed an occupational disease claim for anxiety and depression. He claimed that, on March 6, 2003, Thomas W. Harrison, a supervisor, yelled at him for working his flats from the case rather than from his

stool.[1] Appellant stated that he was not previously instructed to work flats from the stool and Mr. Harrison's public reprimand was embarrassing. He claimed a panic attack and severe anxiety as a result of the March 6, 2003 incident.

Appellant also indicated that working conditions at his facility had greatly deteriorated since the July 2002 arrival of the new postmaster, Curt Shadowens. He stated that intimidation, bullying and vulgarities on the workroom floor had become the norm. Appellant alleged that the postmaster would stand 6 to 12 inches behind him for 30 to 45 minutes at a time waiting and watching for appellant to do something wrong. He alleged that the postmaster changed employee work habits and threatened employees if they reverted to their old way of doing things. In one instance, appellant was allegedly threatened with an official discussion if a single scan from his handheld computer was missed. He noted that a second infraction would result in a letter of warning. Appellant explained that he was required to scan dozens of items each day and it appeared that some items were being carefully hidden.

The postmaster also allegedly told appellant in September 2002 that he should wait until a scheduled break to use the restroom, and in October 2002 the postmaster reportedly accompanied appellant on his route and directed appellant to keep up with his "frantic, running pace." Appellant further stated that he was ridiculed in the office and on the street for reportedly being too slow.

In a November 4, 2003 statement, Mr. Harrison acknowledged having spoken with appellant on March 6, 2003 regarding his work habits. He stated that he previously instructed appellant and the rest of the letter carriers regarding the proper handling of the mail. Mr. Harrison explained that he merely inquired why appellant was not following instructions and advised him to abide by the instructions, or otherwise he could be subjected to discipline. He denied raising his voice or shouting at appellant.

In an undated statement, Mr. Shadowens denied standing 6 to 12 inches behind appellant. He stated that he had absolutely no interest in getting that close to appellant or anyone else. Mr. Shadowens noted that it was his job to observe employee work habits and to correct any deficiencies by bringing it to the carrier's attention. He also acknowledged changing work habits at the facility, which resulted in a 28 percent increase in productivity.

Mark Kreger, a fellow letter carrier, provided a February 28, 2003 statement. He observed management telling appellant he was incorrectly placing his letters and flats into a case and was moving too slowly. Mr. Kreger also indicated that appellant was accused, among other things, of timing his casing duties, filling out forms at the wrong time and improperly pulling down his mail and loading his tub incorrectly. He believed that management was trying to make an example of senior employees like appellant. Mr. Kreger also indicated that appellant was told to take bathroom breaks at certain times rather than on an as needed basis.

In a March 10, 2003 statement, Paula Donera, a letter carrier, stated that since the postmaster's arrival in 2002 he pushed workers as hard as he could. Ms. Donera indicated that

[1] Mr. Harrison reportedly shouted "'I told you about this, I told you to work them off your stool. I told you about this and I'm not warning you again."

the postmaster believed that something was wrong if an employee was not moving at a frantic pace all the time. He would stand behind employees and watch until an opportunity arose to correct a mistake. Ms. Donera further indicated that the amount of work management assigned could not possibly be handled in a 10-hour day and the postmaster harassed employees when work was not completed.

Appellant submitted medical reports dated April 25 and 28, 2003 from Dr. Robert E. Blackwood, a Board-certified family practitioner, who noted that appellant had two episodes of excessive anxiety and depression that were related to incidents in the workplace. The first episode occurred in November 1999 when appellant felt he was treated unfairly by a supervisor. He became tense and nervous and experienced panic attacks. Dr. Blackwood indicated that appellant returned to work after a month of treatment. He continued to do well until early March 2003, when he had another episode at work. Appellant felt he was treated inappropriately and harassed by his supervisor and the incident exacerbated his symptoms of stress, panic and depression. Dr. Blackwood noted that appellant was referred to a clinical psychologist for evaluation and treatment. When last seen on April 21, 2003, he advised appellant to attempt to return to work.

The Office also received treatment records from Dr. Walter E. Afield, a Board-certified psychiatrist, who diagnosed employment-related depression, anxiety and post-traumatic stress disorder.

In a decision dated April 19, 2004, the Office denied appellant's claim. It found that appellant did not establish a compensable employment factor.

He requested an oral hearing, which was held on February 14, 2005. At the hearing, appellant raised additional employment factors. On September 5, 2003 a man allegedly punched appellant in the chest while he was delivering mail at a condominium complex. The alleged assailant, John Reilly, was the concierge at one of the buildings in a condominium complex. Appellant reportedly joked with him about having mail from an irate resident who had complained to Mr. Reilly about the timing of the mail delivery.[2] Mr. Reilly allegedly followed appellant into the mailroom where he pushed and then punched appellant in the chest. In the ensuing days, Mr. Reilly allegedly interfered with appellant's ability to carry out his duties by refusing to let him in the building and refusing to sign for the mail. Appellant stated that he was not immediately troubled by the September 5, 2003 incident. However, when Mr. Reilly repeatedly interfered with the mail delivery, appellant became concerned and reported the incident to the postmaster, who in turn reported the matter to the Postal Inspection Service. Appellant later filed a report with the local police department. Both the police and the employing establishment investigated the matter.[3] With respect to an internal investigation, appellant stated that he felt like he was being interrogated or grilled. He was concerned about

[2] Appellant learned about the problem between Mr. Reilly and the resident earlier that day while delivering mail at another building in the condominium complex. Some of Mr. Reilly's coworkers had been joking with him about the situation over the two-way radio.

[3] Although appellant reported the incident to the local police, he did not press charges against Mr. Reilly. When questioned by the police, Mr. Reilly denied striking appellant.

the investigation because his union representative reportedly told him that the inspection service was likely going to pin the incident on him.

On October 15, 2003 a supervisor who accompanied appellant on his route advised that he was wasting time by constantly opening and closing the windows on his mail truck. After conferring with the postmaster regarding his observations, the supervisor informed appellant that the postmaster was ordering him not to open the vehicle windows. Appellant explained that the Florida heat made it unsafe to drive his mail truck with the doors shut and the windows closed as he was concerned about possible heatstroke. However, he abided by the postmaster's orders for approximately 50 days until an agreement was reached outlining certain limited circumstances when appellant could operate the vehicle with the left-side door and window open.

The hearing representative also received seven statements from coworkers who indicated that the station's policy was that carriers were to case their flat mail from buckets that were to be placed on their stool. This policy dated back to 2003.

Mr. Shadowens reviewed the hearing transcript and commented that the procedure he implemented for casing flats from the carrier's stool was more efficient and consistent with postal regulations whereas appellant's preferred method was "slow and restrictive." He also noted that the person who allegedly attacked appellant was a 78-year-old retired oral surgeon, who had recently undergone bypass surgery. Mr. Shadowens explained that the inspection service concluded that no further action was warranted and the matter was dropped. He also denied appellant's allegation that he instructed him to drive with the vehicle doors and windows closed. Mr. Shadowens stated that appellant was always permitted to operate his mail truck with the driver-side door and window open.

In a March 19, 2003 report, Dr. Rona W. Ross, a psychologist, diagnosed employment-related anxiety and depression. In a November 6, 2003 report, Dr. Afield addressed the effects of the September 5 and October 15, 2003 incidents on appellant's ongoing psychiatric condition.

By decision dated May 4, 2005, the Office hearing representative affirmed the April 19, 2004 decision. With respect to the additional employment incidents alleged at the February 14, 2005 hearing, he found that appellant had not proven that he was required to operate his mail truck with the windows and doors closed on or after October 15, 2003. Regarding the alleged assault on September 5, 2003, and Mr. Reilly's subsequent interference with appellant's attempted mail deliveries, the hearing representative found that these incidents were not compensable because they arose out of a nonwork-related, personal matter between appellant and his assailant.

On June 13, 2005 appellant requested reconsideration and he submitted additional progress notes from Dr. Afield dated March 9, April 6 and May 11, 2005. In a decision dated September 6, 2005, the Office denied reconsideration.

Appellant filed another request for reconsideration on September 13, 2005. This request was accompanied by an April 25, 2003 report from Dr. Blackwood, which appellant had previously submitted. The Office denied appellant's request in an October 6, 2005 decision.

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.[4]

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.[5] 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.[6] 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.[7]

ANALYSIS

Appellant's allegations of intimidation, bullying and vulgarities on the workroom floor are vague and unsubstantiated. He also claimed to have been threatened with possible disciplinary action if mistakes were made while scanning the mail. However, he did not provide any specific information with respect to date, time, location and the individuals involved. Additionally, appellant alleged that he was ridiculed in the office and on the street for reportedly being too slow.[8] Again, appellant failed to provide specific information.[9] As such, appellant's vague and unsubstantiated allegations are not compensable under the Act.

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[4] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[5] *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *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).

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

[8] Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment. *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

[9] While the tenor of Mr. Kreger's and Ms. Donera's statements support appellant's general allegations, these statements also lack specific details.

His allegations of a forced change of work habits, increased tension and a decline in office morale are similarly noncompensable. Other than the requirement to case mail from the stool, appellant did not identify any specific changes initiated by the postmaster that were allegedly erroneous or abusive. An employee's frustration from not being permitted to work in a particular environment is not compensable.[10] While Mr. Shadowens acknowledged changing work habits at the facility, he indicated that the changes were for the betterment of the employees and the organization. He also noted that they were in keeping with the organization's policies and procedures and resulted in an increase in productivity. Mr. Shadowens also allegedly told appellant in September 2002 that he should wait for his official break to use the restroom. The evidence, however, is not sufficient to establish error or abuse in the postmaster's comments to appellant.

Complaints about the manner in which a supervisor performs his duties or exercises his discretion fall, as a rule, outside the scope of coverage provided by the Act.[11] This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.[12] In this instance, appellant has not identified any error or abuse on the part of the employing establishment in implementing various changes, including use of the stool for casing flat mail. Appellant took exception to Mr. Shadowens' practice of monitoring his work. He claimed that while working at his case, the postmaster would stand six inches to a foot behind him for up to 45 minutes at a time waiting for him to make a mistake. Mr. Shadowens denied standing that close to appellant, and noted that it was his responsibility to monitor the work habits of the employees. While Ms. Donera did not mention appellant by name, she too reported that the postmaster would stand behind employees and observe their work until an opportunity arose to correct a mistake. Appellant also claimed that in October 2002 the postmaster accompanied him on his route and ordered him to keep up with a "frantic, running pace." Mr. Shadowens noted that it was his responsibility as a manager to observe employee work habits and to correct any deficiencies he noted by bringing it to the carrier's attention. Monitoring work performance is an administrative function of the employer, and therefore, not compensable unless shown to be erroneous or abusive.[13] In this instance appellant has not shown error or abuse on the part of the postmaster in monitoring his work activities inside the facility and while delivering his route.

Appellant claimed that Mr. Harrison, a supervisor, embarrassed and upset him on March 6, 2003 when he yelled at him for not casing his mail in an appropriate fashion. Appellant stated he was not aware of the requirement that he case his flats from the stool behind him rather than from the case ledge. However, seven employees provided statements indicating that carriers were required to case flats from their stools, and at least one employee stated that this policy was in effect beginning in 2003. Mr. Harrison acknowledged speaking with appellant

[10] *See Lillian Cutler*, *supra* note 5.

[11] *Marguerite J. Toland*, *supra* note 8.

[12] *Id.*

[13] *Debora L. Hanna*, 54 ECAB 548, 551 (2003).

on March 6, 2003 regarding his work habits, but denied raising his voice or shouting. He explained that he had previously instructed appellant regarding the proper handling of the mails and, when he approached appellant on March 6, 2003, he merely inquired why appellant was not following instructions. Mr. Harrison also stated that he advised appellant to abide by the instructions or otherwise he could be subjected to discipline. The verbal reprimand appellant received on March 6, 2003 was an administrative matter and is not compensable absent a showing of error or abuse on the part of the employing establishment.[14] Again, appellant has failed to demonstrate error or abuse on the part of the employing establishment in discharging its administrative responsibilities.

On October 15, 2003 appellant was allegedly instructed to operate his mail truck with the windows and doors closed. Mr. Shadowens disputed appellant's claim that he was required to deliver his mail route with the vehicle windows and doors closed. According to Mr. Shadowens, appellant was always allowed to operate the vehicle with the driver-side door or window open and it was only the left-side window that was the subject of the October 15, 2003 incident. He further noted that this fact was clearly reflected in the December 2, 2003 settlement agreement, which specifically references only the left-side window as being the subject of the settlement.

The record does not support appellant's contention that he was required to operate his mail delivery vehicle with all the windows and doors closed. The settlement agreement allowed appellant to roll the left-side window down and up as long as he was able to do so efficiently. The employing establishment's policies and procedures regarding the safe and efficient operation of equipment are administrative in nature. As such, appellant must show error or abuse on Mr. Shadowens' part in initially restricting the use of the vehicle's left-side window. No such evidence has been presented in the instant case. Absent an admission of fault, a settlement agreement does not establish error or abuse on the part of the employing establishment.[15]

The final incident that appellant identified as contributing to his claimed emotional condition was an alleged assault on September 5, 2003. He also alleged that Mr. Reilly interfered with his mail deliveries and of the employing establishment's investigation of this matter. Mr. Reilly denied appellant's allegations when questioned by the police. Appellant stated that he was not troubled by the September 5, 2003 incident until Mr. Reilly started to interfere with mail delivery. The Board finds that the evidence of record is not sufficient to establish an assault while delivering his mail route on September 5, 2003. However, there is evidence that Mr. Reilly interfered with appellant's delivery of the mail by denying him access to the condominium and by refusing to sign for the residents' mail. This occurred while appellant was reasonably fulfilling the duties of his employment.[16] Mr. Reilly's interference with appellant's mail deliveries was related to his employment duties and therefore is compensable under the Act.

[14] *Roger W. Robinson*, 54 ECAB 846, 852 (2003).

[15] *Kim Nguyen*, 53 ECAB 127, 128 (2001).

[16] *Vincent A. Rosenquest*, 54 ECAB 166, 168 (2002).

Lastly, appellant stated that he felt he was being interrogated or grilled when he was questioned by the Postal Inspection Service regarding the September 5, 2003 assault. Investigations are generally an administrative function of the employer and unrelated to the employee's regular or specially assigned work duties.[17] The postmaster indicated that the inspection service concluded that no further action was warranted and the matter was dropped. In this instance, appellant has not established administrative error or abuse on the part of the employing establishment in investigating the September 5, 2003 assault.

The Board finds that Mr. Reilly's interference with appellant's delivery of the mail is a compensable factor of employment. The Office's May 4, 2005 decision will be modified to reflect this finding. Because the Office previously found no compensable factors established, it did not review the medical evidence of record. The case will be remanded to the Office for further development as it deems necessary followed by the issuance of an appropriate *de novo* decision on the merits.

CONCLUSION

The Board finds that the case is not in posture for decision.[18]

[17] *Ernest St. Pierre*, 51 ECAB 623, 624 (2000).

[18] Given the Board's disposition of the merits of the claim there is no need to address the propriety of the Office's decision to deny appellant's June 13 and September 13, 2005 requests for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2005 decision of the Office of Workers' Compensation Programs is affirmed as modified and the case is remanded for further action consistent with this decision. The October 6 and September 6, 2005 decisions denying reconsideration are set aside.

Issued: April 11, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board