

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

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**W.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Columbus, OH, Employer**

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**Docket No. 06-1278  
Issued: December 26, 2006**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 15, 2006 appellant filed a timely appeal from an April 12, 2006 decision of the Office of Workers' Compensation Programs' hearing representative who affirmed the denial of 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 met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On October 26, 2004 appellant, then a 35-year-old city carrier, filed a claim alleging that he developed stress due to factors of his employment. He alleged that he had difficulty performing his job due to a prior work injury and, as a result, his coworkers created a hostile work environment by name calling and being disrespectful to him.<sup>1</sup> Appellant alleged that the

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<sup>1</sup> The record reflects that appellant has an accepted right knee strain for a July 9, 2002 injury. File No. 092022978.

situation escalated on October 14, 2004 to the point that he had to stop work and obtain help for stress. The employing establishment noted that appellant did not report any stress-related conditions or workplace issues prior to filing his claim.

In an undated narrative, appellant described events that he believed led to his emotional condition. He worked in pain due to a prior injury and his medical bills had been sent to a collection agency. Appellant alleged that he could not get help to resolve problems regarding his claim. He received no respect from coworkers because he was having problems performing his job and this encouraged his coworkers to engage in name calling. On October 13, 2004 a carrier cut “advo” along with other mail which meant that he would have to carry all of the mail the next day.<sup>2</sup> On October 14, 2004 appellant arrived at work and discovered that a coworker was casing the route that he was supposed to carry. He complained to the coworker that the route still had the mail that had been cased and that his coworker responded by calling him names and making threats. Appellant left work under emotional distress. He advised that he returned to work on October 15, 2004 “thinking I could handle the hostile work environment.” Appellant went to the route that he had to carry and found that “I assume my coworkers thought it would be funny to cut the advo on me again.” He noted that he went to his manager address this treatment and attended a “plan five” meeting.<sup>3</sup> Appellant discovered that he was the subject of jokes and name calling. He left work as a result and did not return.

The Office received an October 26, 2004 Form CA-20 completed by Dr. James Barnes, Board-certified in family medicine, who diagnosed depression, anxiety and anger management and checked a box “yes” indicating that appellant’s condition was caused or aggravated by his employment. In a November 8, 2004 report, Dr. Barnes opined that appellant could not return to work as he had depression and anger management issues, that were “almost certainly exacerbated by his work environment.”

In a letter dated November 23, 2004, the Office requested that appellant submit additional factual and medical evidence.

On December 16, 2004 Dr. Barnes noted treating appellant in October 2004 for extreme rage. He diagnosed depression, insomnia and anger management difficulties. Dr. Barnes noted that appellant related having conflicts with coworkers, as well as other symptoms consistent with depression. He noted that appellant’s condition was significantly worsened “secondary to stress related to his work environment, including harassment by coworkers.” Dr. Barnes opined that appellant could return to work after completing treatment. He suggested that appellant could return to similar duties, but recommended that he would do better if stationed at a different route or postal station. Dr. Barnes opined that appellant’s work environment “does appear to contribute to his condition.”

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<sup>2</sup> “Advo” refers to the term used by carriers to represent advertising mail.

<sup>3</sup> Appellant did not explain the nature of a “plan five” meeting.

In reports dated February 22 and March 14, 2005, Dr. Stephen Pariser, a Board-certified psychiatrist and neurologist, stated that appellant might have a chronic life long mood disorder. He checked a box “yes” on the form report to indicate that appellant’s condition was employment related and opined that his condition was worsened by conflicts at work.

By decision dated May 4, 2005, the Office denied the claim. It found that appellant did not establish any compensable factors as arising in the performance of duty.

Appellant requested a telephone hearing that was held on January 10, 2006. He described events that he believed caused stress, including problems completing his route after he sustained a work-related right knee injury on July 9, 2002. Appellant experienced severe pain when he walked his route but his supervisors criticized him for not finishing his work quickly or properly. He stated that he was a T6 carrier, which meant that he carried five different routes and covered routes of carriers who had an off day. Appellant alleged that the carriers would leave their mail or “cut” their mail, so that he would have to do it the next day, which caused him to carry extra mail. He noted that he had been attacked by dogs, so they called him “dog bites,” “pork chop,” “whiner” and “asshole.” When appellant complained to his supervisors, they “would n[o]t do anything.” He stated that he had no witness statements because former coworkers at the employing establishment were “sticking together.” Appellant reiterated his prior contentions. He alleged that Rick Reed, the regular carrier, left the advertising flyer for him to deliver on November 13, 2004. Appellant confronted Mr. Reed upon discovering that Mr. Reed put leftover mail in the case that he was to deliver. He testified that Mr. Reed called him names and threatened him. Appellant left work that day and saw his doctor. When he returned to work on October 14, 2004, “advo” was again left for him and there was more name calling and threats. Appellant stated that “advo” was cut on him again on October 15, 2004. He testified that, during a morning meeting on October 15, 2004, Mr. Reed and another coworker started joking and laughing at him but management did nothing. Appellant alleged that the name calling got to him and he left. He denied threatening anyone. Appellant testified that he had not worked since October 15, 2004 and that he applied for disability retirement.

The Office also received disability certificates, in which Dr. Adam Brandemihl, a psychiatric resident at Ohio State University, stated that appellant was unable to work from January 20 to July 15, 2005. In a May 16, 2005 report, Drs. Brandemihl and Pariser noted that appellant related his depression to hostility from coworkers. They opined that appellant was disabled and would not be able to return to work. In a November 2, 2005 report, Dr. Daryl Shorter, a psychiatric resident at Ohio State University, diagnosed major depressive disorder and anxiety disorder and opined that appellant could not work. In a May 2, 2005 report, Jennifer Darn, a licensed professional clinical counselor, indicated that appellant’s condition resulted from stress and harassment at work. She noted that appellant related being subjected to taunting and intimidation and having no support from supervisors and union leadership.

The employing establishment denied that appellant was harassed or verbally abused and submitted statements regarding the events of October 13 to 15, 2004. In a November 19, 2004 investigative memorandum, Cherie Joiner, a manager, noted that on October 14, 2004 she was informed that appellant had left work. She spoke to him on the telephone and he informed her that “he was feeling stressed” and needed to leave before he got “upset.” When Ms. Joiner questioned appellant about sources of stress, he did not want to discuss it but wanted to see his

doctor. On October 15, 2004 appellant came to work but did not discuss any incident regarding the previous day. Ms. Joiner noted that he later returned to her office with a union representative and explained that he needed to leave because “the regular on route 3223 had cut ‘advo’ on him and people were making fun of him.” She stated that it “was found that the ‘advo’ left by the case was leftover from two days ago.” When Ms. Joiner returned to discuss the matter, appellant explained that he was “tired of all the crap he had to deal with.” Appellant did not want to discuss it and he completed a Form 3971 and left work. On October 20, 2004 he returned with medical documentation indicating that he was incapacitated for work. Appellant alleged that stress caused his incapacity but, when she questioned him about the cause of his stress, he did not want to talk and feared retaliation.

Ms. Joiner submitted a statement from Jim Holden, an employee, who alleged that appellant commented to a supervisor, Dan Golden, that he was “going to kick that little fucker’s ass.” She noted that this statement was not confirmed by Mr. Golden. Ms. Joiner also enclosed a statement from a union representative, Mitchell Sayers, which described the incident of October 14, 2004. She stated that management was not aware of a hostile work environment and denied that one existed. A statement from T.R. Moore noted that appellant could ask for carrier assistance.<sup>4</sup>

In a November 15, 2004 statement, Mr. Golden confirmed that, on October 14, 2004, Mr. Reed reported to work on his normal day off. Due to this, he moved appellant to another route. However, Mr. Golden noted that appellant stated that he was going home. A November 19, 2004 statement from Howard Jarvis, a carrier, confirmed this incident. In an October 14, 2004 statement, Mr. Reed indicated that appellant was kicking equipment and throwing things. He stated that appellant went to a supervisor and then went home while he ended up carrying appellant’s route.

In a December 28, 2004 statement, Donna Flint, a workplace improvement analyst, summarized her investigation into the allegations of a hostile work environment. She spoke with over 18 carriers, 3 clerks and 4 members of previous and current management. The majority of individuals believed that it was a good station in which to work and stated that “most employees said they have never seen harassing, bullying, name-calling or hostile behavior.” When employees were questioned about appellant, most noted that he was neither a main participant nor a subject of jokes, but would occasionally make a joke. Appellant was not observed to be angry or upset. Ms. Flint noted that one person thought the joking sometimes went too far. Based on her interviews, she concluded that appellant’s allegations of harassment or verbal abuse by coworkers were unsupported. Ms. Flint enclosed a statement from another supervisor, Sunday Greer, who supported her conclusion.

The Office also received a copy of appellant’s application for disability retirement, a notice of separation from the postal service dated September 23, 2005 and a December 1, 2004 letter from Ms. Joiner, who advised him that he would need a medical clearance to return to work.

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<sup>4</sup> T.R. Moore’s position with the employing establishment is not listed.

In a February 23, 2006 statement Shirley J. Bever, a coworker, noted working with appellant for several years at the employing establishment. She stated that injured workers were subject to harassment and retaliation by a prior station manager, Mary Leach. Ms. Bever asserted that appellant was pushed around by both management and bullies at work. She alleged that the bullies created the circumstances that forced him to leave work by putting mail at his case that did not belong to his route.

By decision dated April 12, 2006, an Office hearing representative affirmed the May 4, 2005 decision, finding that appellant had not established any compensable factors of employment.

### **LEGAL PRECEDENT**

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>5</sup> 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.<sup>6</sup>

A claimant 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.<sup>7</sup> 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.<sup>8</sup>

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>9</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

<sup>7</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>8</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>9</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>10</sup>

### ANALYSIS

Appellant alleged that his emotional condition resulted from several employment incidents. The Office denied his claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged stress due to medical bills for his accepted claim, which remained unpaid and were sent to a collections agency. He further alleged that he received no help to resolve the problems regarding his claim. To the extent that appellant was alleging that his emotional condition stemmed from problems related to the processing or handling of his accepted claim, the Board notes that the development of any condition related to such matters would not arise in the performance of duty. The processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.<sup>11</sup>

Appellant alleged that his job performance was criticized as a result of his previously accepted work injury. 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.<sup>12</sup> Although evaluations and job performance issues are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>13</sup> 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.<sup>14</sup> In the instant case, appellant's allegations are general in nature and he has not noted any specific instances of management's criticism of his job performance. He has not shown any specific instances of error or abuse. Appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Appellant asserted that he was subjected to harassment and verbal abuse by his coworkers. He alleged that he was the subject of jokes and name calling. Appellant also alleged that he was the brunt of jokes during a plan five meeting on October 15, 2004. The Board has recognized the compensability of harassment and verbal abuse in certain circumstances. This

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<sup>10</sup> *Id.*

<sup>11</sup> See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

<sup>12</sup> 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).

<sup>13</sup> *Id.*

<sup>14</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>15</sup> The employing establishment denied any knowledge of any derogatory statements being made towards appellant. In support of allegations, appellant submitted a report from Ms. Darn, who attributed his condition to harassment at the employing establishment, as well as taunting and intimidation. He also submitted a statement from a coworker, Ms. Bever, who alleged that appellant was pushed around by management and bullied. However, the Board notes that these statements were vague in nature and generalized. They do not address specific instance of harassment or identify the parties allegedly responsible for such actions. The Board finds that appellant has not established verbal abuse by coworkers.<sup>16</sup>

To the extent that appellant asserted that the actions on the part of his coworkers constitute harassment and discrimination and contributed to his claimed stress-related condition; the Board has held that, these could constitute employment factors.<sup>17</sup> 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.<sup>18</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination. He has not submitted sufficient evidence to establish harassment or discrimination by his supervisors or coworkers.<sup>19</sup> Appellant alleged that Mr. Reed called him names and threatened him. However, the statements submitted by the employing establishment do not support appellant's contentions. Mr. Holden indicated that appellant may have also engaged in making a threat. While appellant alleged that his coworkers created a hostile work environment, he has not supported the allegations with specific instances and dates. The employing establishment denied any knowledge of his allegations until the incident of October 15, 2004. Ms. Flint conducted an investigation into appellant's allegations and concluded that his allegations were unsupported. The Board finds that the evidence is insufficient to establish that the incidents alleged as harassment by appellant are factually established such as to rise to the level of compensable employment factors.

Appellant alleged that he was having difficulty performing his job as a result of pain from a prior work injury. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated

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<sup>15</sup> *Harriet J. Landry*, 47 ECAB 543, 547 (1996); see *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>16</sup> See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

<sup>17</sup> *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>18</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>19</sup> 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).

by the record.<sup>20</sup> However, he has not submitted any documentation to support this other than generally alleging that it was hard to complete his route due to pain from his prior injury. For example, appellant did not provide any details regarding his position, his restrictions from his prior injuries, the specific time period involved or how he completed his route in relation to the difficulties he was having performing his position. The employing establishment noted that he could ask for carrier assistance. Without additional evidence in this regard, appellant has not established a compensable factor in this regard.

Appellant also alleged that other carriers were leaving or cutting the advertising flyers from their routes, which meant that he had more mail to deliver on the days that he was delivering mail. He alleged that he was stressed from this situation. The Board has held that where an employee experiences emotional stress in carrying out employment duties and the medical evidence establishes that the disability resulted from his or her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and would, therefore, come within coverage of the Act.<sup>21</sup> In support of his claim, appellant referred to an incident on October 13, 2004, in which he alleged that Mr. Reed left “advo” for him and that he became engaged in a confrontation that erupted into name calling and his leaving the employing establishment. The Board notes that appellant left prior to performing his deliveries. Appellant also alleged that, on the next day, October 14, 2004, the pattern was repeated and that, when he complained to his supervisor, nothing happened. However, the evidence establishes that it is not actual job duties such as delivering mail to which appellant is attributing his stress, rather he claimed stress due to his perception of how he was treated by coworkers and management. For example, appellant alleged that he believed his coworkers thought it was funny to cut the advertising on him and again, left work without performing his deliveries. While Ms. Joiner from the employing establishment confirmed that an investigation had occurred on October 15, 2004 and found that the “advo” had been cut. She also noted that appellant did not make any deliveries, as he left work on this date and the two previous dates of October 13 and 14, 2004, in which he also alleged that the carriers had left extra mail for him. Thus, the evidence does not establish a compensable work factor in this regard.

### CONCLUSION

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.<sup>22</sup>

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<sup>20</sup> *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

<sup>21</sup> *Vitaliy Y. Matviiv*, 57 ECAB \_\_\_\_ (Docket No. 05-1328, issued October 26, 2005).

<sup>22</sup> 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated April 12, 2006 is affirmed.

Issued: December 26, 2006  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board