

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

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**RICHARD K. MURRAY, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Port Huron, MI, Employer**

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**Docket No. 06-467  
Issued: July 6, 2006**

*Appearances:*  
*Richard K. Murray, pro se*  
*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 December 27, 2005 appellant filed a timely appeal from a September 20, 2005 decision of the Office of Workers' Compensation Programs affirming the denial of his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On June 28, 2004 appellant, then a 41-year-old customer service supervisor, filed an occupational disease claim alleging that he sustained stress, depression, anxiety, insomnia and agitation. He stated that supervisors Adrian J. Galazka and Alex Kozenis falsely charged him and forced him from his position on June 21, 2004 following a June 16, 2004 verbal altercation with subordinate Kelly Hadd. Appellant stopped work on June 21, 2004.

In June 16, 2004 memoranda, Mr. Galazka, the employing establishment's officer in charge, noted meeting that day with Ms. Hadd and Mr. Kozentis. Mr. Galazka noted that Ms. Hadd lived with appellant. Ms. Hadd explained that she recently moved out of appellant's home due to a confrontation with him. On June 16, 2004 appellant confronted her at work, used profanity and threatened her. Mr. Galazka referred the matter to the employing establishment's inspection service.

In a June 18, 2004 statement, Ms. Hadd stated that on June 16, 2004 at the employing establishment, appellant entered the office where she was working to open his vault. He appeared frustrated when he could not open the vault. Appellant then stood "nose to nose" with Ms. Hadd and said "F--- You Mother f---er" and "You disloyal bitch, I'm gonna get you Motherf---er, you're gonna get yours." Ms. Hadd reported this to Mr. Galazka, Mr. Kozentis and coworkers Ronald Newton and Carol Weichsler.<sup>1</sup> Ms. Hadd explained that she did not wish to have appellant disciplined or removed, only that she wanted to notify management so that the situation could be "monitored."

In a June 18, 2004 statement, Mr. Kozentis asserted that, on June 16, 2004, Ms. Hadd informed him that she had lived with appellant for approximately one year. On Monday, June 14, 2004, she left the home with her daughters due to a "situation" with appellant. Ms. Hadd stated that, on June 16, 2004, appellant stood inches from her, pointed at her face and stated that he was "going to f---ing get her."

In a June 21, 2004 letter, Ms. Hadd stated that management had "exaggerated a minor mishap" and that appellant did not use the word "kill" on June 16, 2004. On June 21, 2004 Mr. Galazka noted that Ms. Hadd sought to retract her statement but Mr. Newton affirmed his prior account of events. Ms. Hadd noted that she wished to help appellant.

In a June 22, 2004 order, Mr. Galazka detailed appellant to the Mount Clemens station effective June 28, 2004 to approximately July 31, 2004. He advised appellant of the medical evidence needed to support his work absence beginning that day.<sup>2</sup>

In a June 24, 2004 statement, appellant noted that had lived with Ms. Hadd. After a June 15, 2004 "break down" in their relationship, he alleged that Ms. Hadd's ex-husband threatened him. Appellant then called the police. When the police arrived, Ms. Hadd and her children left the residence. Appellant asserted that all that happened on June 16, 2004 was that he said the word "damn" as he could not get a vault open. Ms. Hadd stated that appellant could not speak to her in that way. Appellant then told her that he would put her on warning, that she needed to do her job. He asserted that, on June 20, 2004, Ms. Hadd wanted to reconcile with him. However, Ms. Hadd appeared at his residence on June 20, 2004 with a local police officer to retrieve her personal belongings. On June 21, 2004 Mr. Galazka informed appellant that he

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<sup>1</sup> Mr. Newton and Ms. Weichsler submitted June 16, 2004 statements asserting that Ms. Hadd informed them earlier that day of appellant's obscene and threatening remarks. Both individuals advised appellant to contact postal inspectors due to the potential for violence.

<sup>2</sup> In June 22, July 7 and 16, 2004 letters, the employing establishment advised appellant to submit medical documentation in support of his work absence.

would be transferred to the Mount Clemens station effective June 22, 2004 due to Ms. Hadd's complaint. Mr. Galazka and other officials questioned appellant regarding his conduct on June 16, 2004 and the nature of his relationship with Ms. Hadd. Appellant then asked to use leave for the rest of the week, which Mr. Galazka approved.

In a July 2, 2004 letter, Mr. Kozentis explained that it was standard operating procedure to detail an employee to another office during investigations until such time the issue was resolved.

In a July 12, 2004 letter, the Office advised appellant of the additional factual and medical evidence needed to establish his claim, including a detailed statement of the work factors alleged to have caused the claimed emotional condition, and a rationalized report from his physician explaining a causal relationship between those factors and the emotional condition.

In a July 21, 2004 letter, appellant asserted that his emotional condition was caused by Mr. Galazka's decision to detail him out of his position without prior notice although the investigation did not reveal any wrongdoing on his part. Appellant asserted that his condition was not caused by the temporary detail itself.

In a July 30, 2004 statement, Mr. Galazka noted that he informed appellant of his transfer to Mount Clemons station during a conversation on June 21, 2004.

Appellant also submitted medical evidence. Dr. Paul Bruer, an attending internist, completed June 30, July 13 and 29, 2004 form reports relating appellant's account of being falsely accused and demoted at work. Dr. Bruer opined that appellant sustained an acute reactive depression. He held appellant off work from July 12 to August 2, 2004.<sup>3</sup>

By decision dated August 26, 2004, the Office denied appellant's claim on the grounds that he failed to establish any compensable factors of employment. The Office accepted as factual that there was an investigation surrounding the events of June 16, 2004 and that he was temporarily reassigned during the investigation. The Office found that appellant's reaction to the investigation and his subsequent detail was not compensable. The Office further found that there was "no evidence that [appellant was] falsely accused of any wrongdoing" or that he was demoted. The Office found that, as appellant failed to substantiate any compensable factors of employment, the medical evidence need not be reviewed.

In a September 24, 2004 letter, appellant requested an oral hearing which was held on July 12, 2005. At the hearing, appellant attributed his condition to Mr. Galazka and other management officials interviewing him on June 21, 2004, informing him of the detail and failing to follow established investigative procedures. He asserted that the employing establishment committed error or abuse by delaying the investigation for two days instead of immediately interviewing Ms. Hadd and himself on June 16, 2004. He contended that Mr. Galazka erred by

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<sup>3</sup> Appellant also submitted June and July 2004 mental health clinic intake forms

believing his coworker's statements as they were hearsay or could have been made in retaliation for past disciplinary measures. Appellant submitted additional evidence.<sup>4</sup>

The June 24 and 25, 2004 investigative reports indicated that appellant and Ms. Hadd lived together beginning in November 2003. Ms. Hadd advised the employing establishment inspectors that she used and possessed one of appellant's credit cards. In an August 2, 2004 proposed letter of warning, Mr. Galazka advised appellant that it was unacceptable that he entered into a personal relationship with a subordinate, continued to supervise her, failed to report the relationship to management and threatened her on June 16, 2004. In response, appellant submitted August 4 and 7, 2004 letters, a September 9, 2004 statement from Ms. Hadd and statements of five coworkers. He asserted that his relationship with Ms. Hadd was not a secret and Mr. Galazka should have been aware of it.<sup>5</sup> Appellant submitted grievance documents asserting that Mr. Galazka erred by letting appellant supervise Ms. Hadd when she lived with him. The employing establishment denied the grievance on August 4, 2004.

In July 12 and December 2, 2004 emails, Mr. Galazka asserted that neither appellant nor Ms. Hadd were being entirely truthful and that Ms. Hadd knew what she was doing by reporting appellant's threat yet asking it be kept confidential. He noted following "all procedures when it came to this investigation."

In July 12, 2005 statements, appellant contended that Mr. Galazka erred by asking for an investigation, that Ms. Hadd lied because she owed him money,<sup>6</sup> and that the medical evidence was sufficient to establish his claim. He stated that the only causative factor were his interactions with Mr. Galazka and Mr. Kozentis on June 21, 2004, not the investigation or the detail to Mount Clemens. Appellant also submitted medical records dated from August to October 2004 regarding treatment for depression.

By decision dated and finalized September 20, 2005, the Office hearing representative affirmed the August 26, 2004 decision, finding that appellant failed to establish any compensable factors of employment. The hearing representative found that the investigation and transfer were administrative actions not considered to be in the performance of duty, and that appellant failed to submit evidence establishing that management committed error or abuse regarding the investigation of the June 16, 2004 incident or imposing the temporary detail to the Mount Clemens station.

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<sup>4</sup> Appellant submitted documents unrelated to his claim, including copies of employing establishment policies and procedures regarding violence in the workplace and sexual harassment, disciplinary records of his coworkers and criticisms of Mr. Galazka and other officials. He also submitted July 2004 emails and forms in which Ms. Hadd alleged that she was discriminated against, ostracized and her telephone tampered with since the June 16, 2004 incident.

<sup>5</sup> He also submitted a June 4, 2004 form designating Ms. Hadd as his retirement beneficiary.

<sup>6</sup> Appellant submitted a copy of a July 10, 2004 check in the amount of \$2,500.00 from Ms. Hadd to appellant and a July 11, 2004 statement indicating that she owed him an additional \$1,000.00.

## LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for personal injuries sustained while in the performance of duty.<sup>7</sup> Where disability results from an employee's reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>8</sup> To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>9</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>10</sup>

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing 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.<sup>11</sup> If a claimant implicates 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.<sup>12</sup>

## ANALYSIS

Appellant alleged that he sustained stress and depression due to an investigation of a June 16, 2004 incident with Ms. Hadd, a subordinate, being interviewed by his supervisors on June 21, 2004 and being detailed from his position. The Office denied his claim on the grounds that the investigation and resulting temporary detail were administrative functions of the employer and that no error or abuse was shown to bring them under coverage of the Act.<sup>13</sup> Therefore, the Board must review whether these alleged incidents and conditions are covered employment factors under the terms of the Act.

Appellant attributed the claimed emotional condition to the fact that the employing establishment investigated a June 16, 2004 verbal altercation between himself and Ms. Hadd. Both appellant and Ms. Hadd confirm that there was a brief altercation on June 16, 2004 in which appellant used strong language. In a June 18, 2004 statement and in discussions on June 16, 2004 with supervisors and coworkers, Ms. Hadd asserted that appellant stood "nose to

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<sup>7</sup> 5 U.S.C. § 8102(a).

<sup>8</sup> 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>10</sup> *Effie O. Morris*, 44 ECAB 470 (1993).

<sup>11</sup> *See Norma L. Blank*, 43 ECAB 384 (1992).

<sup>12</sup> *Marlon Vera*, 54 ECAB 834 (2003).

<sup>13</sup> *Ronald K. Jablanski*, 56 ECAB \_\_\_\_ (Docket No. 05-482, issued July 13, 2005).

nose” with her, threatened her and used extensive profanity. While Ms. Hadd later sought to change or retract these statements, the Board notes that she brought a police officer with her while retrieving her belongings from appellant’s residence on June 20, 2004. This indicates that Ms. Hadd indeed believed that appellant threatened her and that her initial statements were credible. The Board finds that considering the definiteness of Ms. Hadd’s June 16 and 18, 2004 statements and her detailed description of appellant’s threat, it was reasonable for the employing establishment to have conducted an investigation. Appellant has not established a compensable employment factor with regard to the fact of the investigation.<sup>14</sup>

Appellant also attributed his condition to the conduct of the investigation alleging that Mr. Galazka erred by delaying his investigation until June 18, 2004, two days after the June 16, 2004 incident. However, Mr. Galazka met with Ms. Hadd on June 16, 2004, then referred the matter to the employing establishment’s inspection service for further action. Appellant’s allegation that Mr. Galazka delayed his investigation is factually incorrect.

Appellant also alleged that Mr. Galazka and other officials committed error or abuse by questioning him on June 21, 2004 about the June 16, 2004 incident and his relationship with Ms. Hadd. As the investigation was an administrative function of the employer, he must submit evidence to support his allegations of error or abuse in order to bring the June 21, 2004 questioning under coverage of the Act.<sup>15</sup> Appellant did not submit any evidence to substantiate error or abuse in the conduct of the investigation on June 21, 2004. Therefore, he has failed to establish a compensable factor of employment in this regard.

Appellant also attributed his condition to being temporarily detailed to the Mount Clemens station effective June 28, 2004. The assignment of work is an administrative function not considered within the performance of duty absent error or abuse.<sup>16</sup> Mr. Kozentis explained that it was standard operating procedure to detail an employee to another office during an investigation. Appellant did not submit evidence to show how the detail was erroneous or abusive. The factual circumstances demonstrate that appellant was detailed to Mount Clemens station due to the investigation of the June 16, 2004 incident.

Appellant also alleged that the employing establishment committed error or abuse by giving him inadequate notice of the June 28, 2004 detail. Mr. Galazka advised appellant of the temporary detail during a June 21, 2004 conversation and again on June 22, 2004. Appellant did not submit evidence corroborating his assertion that being notified seven days in advance of the detail was erroneous or abusive. Thus, he has not established a compensable employment factor regarding the temporary detail or the period of notice.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Donney T. Drennon-Gala*, 56 ECAB \_\_\_\_ (Docket No. 04-2190, issued April 26, 2005); *Linda J. Edward-Delgado*, 55 ECAB \_\_\_\_ (Docket No. 03-823, issued March 25, 2004)

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>17</sup>

**CONCLUSION**

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty as he failed to establish any compensable factor of employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 20, 2005 is affirmed.

Issued: July 6, 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

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<sup>17</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, 503-03 (1992).