

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

RALPH V. OWEN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ashburn, VA, Employer**

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**Docket No. 05-1773
Issued: March 14, 2006**

Appearances:
Ralph V. Owen, 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 May 2, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated February 9, 2005 in which an Office hearing representative 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 the emotional condition issue.

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 January 26, 2003 appellant, then a 49-year-old postmaster, filed a claim alleging that he developed major depression and anxiety disorder as a result of stress in the course of his duties. He first became aware of his condition on January 8, 2003 and attributed it to his employment on January 10, 2003. Appellant stopped work on January 8, 2003.

In a January 26, 2003 letter, appellant asserted that Judith O'Hara, the manager of Post Office Operations, undermined his authority as postmaster and treated him disparately. On January 8, 2003 he met with her to discuss a mediation conference concerning an Equal Employment Opportunity (EEO) complaint brought by Yasmine Harris, a supervisor who he managed at the Ashburn Post Office, which was scheduled for January 13, 2003. Appellant stated that he did not think it was appropriate that Ms. Harris had asked that Ms. O'Hara be present during the mediation. He disagreed with Ms. O'Hara's order that he settle the EEO complaint and noted that Ms. O'Hara had previously backed him in disciplinary measures taken regarding Ms. Harris. Appellant alleged that Ms. O'Hara engaged in disparate treatment against him as he was assigned additional responsibilities that no other postmaster performed and set forth the manner and direction in which he was to complete these tasks. When his supervisors failed at their duties, Ms. O'Hara had him take over such duties and he alleged that this was deliberately done to set him up to fail. Appellant was instructed to take over some of Ms. Harris' duties as well as the main stamp stock, stock audits and vending duties which were primarily supervisor duties. He asserted that Ms. O'Hara changed his hours from 8:00 a.m. to 5:00 p.m. to 9:00 a.m. to 6:00 p.m., with the additional requirement that he stay in the building until the last dispatch left. Appellant stated that Ms. O'Hara had given him only one day's notice that his hours were changing and had not explained why. He submitted a January 14, 2003 report of Dr. Ronald Matthews, Ph.D., a clinical psychologist, who diagnosed major depressive disorder, single episode, severe anxiety in reaction to stresses imposed upon him by his new supervisor and adjustment disorder with anxiety. He opined that appellant's illness was caused by his employment.

In a February 23, 2003 letter, the Office advised appellant that the evidence submitted was insufficient to establish his claim and requested additional supportive factual and medical information. The Office also requested additional information from the employing establishment.

In a letter dated March 25, 2003, appellant reiterated that his emotional condition was the result of specially assigned duties made by Ms. O'Hara, which were not within his job description or performed by other postmasters and her instruction to settle an EEO complaint that one of his supervisors had brought against him. He perceived Ms. O'Hara's actions as a threat and was done in retaliation for his activities with the National League of Postmasters. Appellant submitted additional reports from Dr. Matthews dated March 24 and July 10, 2003. He opined that appellant's illness was caused by his relationship with his new supervisor and the manner in which she supervised him. He also submitted a May 7, 2003 response to the employing establishment's controversion of his claim.

In an April 25, 2003 letter, Pamela M. Stroud, Manager of Injury Compensation Programs, controverted appellant's claim. In letters dated January 8, February 3 and April 18, 2003, Ms. O'Hara responded to his allegations. She met with appellant on January 8, 2003 to discuss the EEO case brought by Ms. Harris. Ms. O'Hara stated that Ms. Harris had asked her to beat the January 13, 2003 EEO redress hearing because appellant had related that he could not make any decision without consulting her. Ms. O'Hara indicated that they discussed several redress issues and appellant became upset over her suggestion to settle the EEO case. She noted that it was her obligation as his manager to advise and assist appellant.

Ms. O'Hara stated that, prior to their January 8, 2003 meeting, she had asked appellant for an outline of his duties and responsibilities as postmaster and those of the supervisors he managed. She noted that there was an unequal delegation of duties and that a number of tasks that should have belonged on a supervisor's itinerary were on the postmaster's itinerary. Ms. O'Hara indicated that appellant's task of numbering the carriers centralized mail boxes (CBUs) and changing the CBU locks was completed by the actual carrier on the route, maintenance or, as last resort, a supervisor at all the other post offices. At the January 8, 2003 meeting, she told appellant that he would take the main stamp stock duties and his supervisors would be responsible for going out on the street to label CBUs and change the CBU locks. Ms. O'Hara indicated that appellant became upset, claiming that it was not fair as he had risen above that duty. She indicated that when appellant mentioned making an improvement with the Centralizing Forwarding System (CFS). She responded that she had been waiting nine months for him to have it fixed. Ms. O'Hara noted her disagreement with appellant's statements regarding what was discussed during the meeting. She submitted a February 4, 2003 statement from Linda O. Strong, a witness during the mediation between appellant and Ms. Harris, and copies of her electronic mailings with appellant concerning the redress meeting.

Since she had recently taken her position on April 13, 2002, Ms. O'Hara did not consider any corrective action against appellant. She had no idea what made appellant allege that she would want to remove him or that she would set him up to fail. Ms. O'Hara indicated that she made two changes to appellant's operation that were not specially assigned duties. The first change was to his work hours. Ms. O'Hara stated that a postmaster was required to work the hours of the window operation. She had called appellant's post office on many occasions as early as 2:00 p.m. and had been told that he was gone for the day or out on the street changing locks or labeling boxes. Ms. O'Hara told appellant he needed to change his work hours to 9:00 a.m. to 6:00 p.m., after he had sent her an email which stated that a supervisor had missed an entire container of first class priority parcels. She stated that it was his responsibility to ensure that all the mail was cleared from his building. Ms. O'Hara instructed him to make the necessary arrangements as soon as possible in order to assume his new hours of 9:00 a.m. to closing. She took the same action with another postmaster at another office. The second change concerned the handling of the CFS. On May 23, 2002 Ms. O'Hara had two post offices at the bottom of the CFS error goal, one of which was appellant's post office. She sent the same message to both appellant and the other postmaster regarding the CFS error problem. Ms. O'Hara addressed this issue with appellant each month and, after nine months, he had not resolved the situation. She issued specific instructions to appellant on how to handle the CFS issue. Ms. O'Hara's instructions to appellant were the same as those made to other postmasters in handling the same situation. She denied that she had threatened appellant when she stated that she was going to hold him accountable for the centralizing forwarding system issue. Ms. O'Hara had never denied his leave requests. She instructed that postmasters close the buildings each evening as it was important to clear the building of all outbound mail.

By decision dated August 11, 2003, the Office denied appellant's claim on the grounds that he failed to establish a compensable factor of employment.

On September 8, 2003 appellant requested an oral hearing. In a February 25, 2004 decision, an Office hearing representative found the case not in posture for a hearing and

remanded it for further development. The Office hearing representative found that the Office failed to make specific findings as to appellant's allegations.

By decision dated April 1, 2004, the Office denied appellant's claim on the basis that his statements were generic and none of the allegations were established as compensable factors. The Office found that on January 8, 2003 he met with Ms. O'Hara concerning an EEO case and other work-related duties as assigned, but that his reaction did not arise in the performance of duty.

On April 22, 2004 appellant requested an oral hearing which was held on October 27, 2004. He alleged that Ms. O'Hara began a pattern of adding to his responsibilities each time one of his supervisors failed in one of their assigned duties. He stated that, after he was assigned to hold the main stamp stock on January 8, 2003, she subsequently tried to cover her actions of singling him out by issuing directives to all level 20 supervisors regarding main stamp stock responsibilities. At the hearing, appellant stated that he did not have any problems being available for or being at work when Ms. O'Hara changed his work hours and that he did not file a formal complaint against her. Various exhibits were submitted in support of his claim.

On November 22, 2004 Ms. O'Hara responded and reiterated her prior comments. She stated that, after assigning appellant the main stamp stock duties, she reviewed the other post offices at level 20 and above and issued a letter that all postmasters would take the main stamp stock duties unless there was a specific reason that it could not be done. As of April 2003 Ms. O'Hara managed seven level 20 offices and at the end of fiscal year 2003, 5 of the 7 postmasters held the main stamp stock responsibility.

In a January 8, 2005 letter, appellant stated that having the main stamp stock responsibility was not stressful. Rather, it was having additional duties assigned by Ms. O'Hara with the explanation that, "I can." Appellant stated that Ms. O'Hara's decision to give other postmasters the main stamp stock was after the fact and self-serving. He alleged that Ms. O'Hara would have continued to assign additional duties to him once she stopped backing his position with regard to Ms. Harris. Appellant remained responsible for the building being secured at the end of the day, even if his leave was approved. A November 17, 2004 report from Dr. Matthews was submitted along with a July 17, 1998 letter to Bernie Nicholson, Manager, Post Office Operations, concerning a letter of warning that had been issued. In a November 22, 2004 statement, Vivian Anne Crittenden, an acting manager, indicated that appellant, who was a member of the National League of Postmasters, had represented her during a September 2002 meeting against Ms. O'Hara and the District Manager. Ms. Crittenden stated that, after her return to work in June 2003, she heard that appellant was assigned responsibilities for the main stamp stock and required to change his office hours.

By decision dated February 9, 2005, an Office hearing representative denied appellant's claim on the basis that the evidence did not establish that he sustained an injury in the performance of duty. The Office hearing representative found that appellant had not established any compensable factors of employment.

LEGAL PRECEDENT -- ISSUE 1

To establish a claim that he sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹

The Board has held that 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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.²

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.³

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered.⁴ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁵

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁶ To the extent that disputes and incidents alleged

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

² *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*

⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

⁶ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

as constituting harassment by supervisors and coworkers are established as occurring and arising from an employee's performance of his regular duties, these could constitute employment factors.⁷ However, for harassment to give rise to a compensable disability under the Act there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁸ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁹

ANALYSIS -- ISSUE 1

Appellant asserted that Ms O'Hara undermined his authority as postmaster and engaged in disparate treatment and retaliated against him because of his position with the National League of Postmasters. He discussed a January 8, 2003 meeting with Ms. O'Hara in which she told him to settle an EEO complaint which had been filed against him. Appellant also alleged being assigned additional responsibilities that were not assigned to other postmasters. Ms. O'Hara submitted several statements denying his allegations of disparate or inappropriate treatment. Appellant did not file an EEO complaint against Ms. O'Hara or submit detailed descriptions of incidents of alleged retaliation or submit probative evidence to establish retaliation. Thus, there is no detailed evidence supporting his contentions of harassment, disparate treatment or retaliation by Ms. O'Hara or any other probative evidence sufficient to establish a compensable work factor in this regard.

The Board has held that complaints about the manner in which a supervisor performs her duties or the manner in which a supervisor exercises her discretion fall, as a rule, outside the scope of coverage provided by the Act.¹⁰ This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.¹¹ Appellant alleged that Ms. O'Hara directed him to settle an EEO complaint which a supervisor, Ms. Harris, had filed against him. Ms. O'Hara stated that she merely suggested that he settle the EEO case as she thought it was a loser. She further indicated that the ultimate decision belonged to appellant. She noted that she was asked by Ms. Harris to attend the January 13, 2003 mediation conference. While appellant may have disagreed with Ms. O'Hara's opinion on resolving the EEO matter and her attendance at the January 13, 2003 mediation conference, it appears that the final resolution of the EEO matter rested with him. He has not submitted evidence of error or abuse to establish that Ms. O'Hara acted unreasonably in discharging her responsibility of advising him on this matter. Appellant has not established a compensable factor in this regard.

Appellant further alleged that Ms. O'Hara assigned him extra duties not usually assigned to a postmaster and argued that he was being singled out and set up to fail. The Board has held

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

¹⁰ *Marguerite J. Toland*, 52 ECAB 294, 299 (2001).

¹¹ *Id.*

that issues involving the assignment of work duties are an administrative or personnel matter.¹² The record reflects that appellant was assigned the responsibility for the main stamp stock, was required to change his work hours in order to close the office at night and was instructed to reduce the CFS error rate at his office. Ms. O'Hara provided detailed explanations as to why he was assigned such duties. With respect to the main stamp stock responsibility, Ms. O'Hara advised that, after she had assigned appellant that duty in January 2003, other postmasters in level 20 and above post offices were also assigned the responsibility. By the end of fiscal year 2003, 5 of the 7 postmasters held the main stamp stock responsibility. With respect to the change in work hours, Ms. O'Hara stated that a postmaster was required to work the hours of the window operation. She also changed the work hours of a postmaster at another office and had never denied appellant's leave requests. Ms. O'Hara indicated that she had to issue appellant an instruction on how to reduce the CFS error rate after nine months. Appellant presented no evidence of error or abuse in either his work assignments or the issuance of the instructions regarding the CFS error rate or closing the office.¹³ There is no evidence to establish that appellant was singled out or of any error or abuse by Ms. O'Hara in discharging her responsibilities. Appellant did not establish a compensable work factor in this regard.

To the extent that appellant alleged he was required to perform extra duties, the Board finds that his emotional condition may be attributable in part, due to overwork. Overwork is a compensable factor which may give rise to a compensable disability under the Act.¹⁴ However, appellant has the burden of submitting sufficient evidence to substantiate an allegation of overwork.¹⁵ In this case, he did not attribute his emotional condition to performing any extra duties; he simply asserted his belief that Ms. O'Hara assigned additional duties to him as a form of retaliation after she stopped backing his position concerning Ms. Harris. Accordingly, there is no evidence of record to establish this factor. Instead, it appears that appellant experienced frustration from not being permitted to work in a particular environment which, as noted above, is not compensable.

For the foregoing reasons, the Board finds that 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.¹⁶

¹² *James W. Griffin*, 45 ECAB 774 (1994).

¹³ The Board has noted that an administrative or personnel matter will be considered an employment factor only where the evidence discloses error or abuse on the part of the employing establishment. See *Peter D. Butt, Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

¹⁴ *Frank A. McDowell*, 44 ECAB 522, 526 (1993).

¹⁵ *Id.*

¹⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Roger Williams*, 52 ECAB 468, 474 (2001); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

CONCLUSION

Appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 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