United States Department of Labor
Employees' Compensation Appeals Board

SHARON K. CHAVEZ, Appellant	)	
and	)	**Docket No. 05-1709**
	)	**Issued: May 4, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Spamaway, WA, Employer	)	

Appearances:
Sharon K. Chavez, 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 August 15, 2005 appellant filed a timely appeal from a merit decision of a hearing representative of the Office of Workers' Compensation Programs dated May 10, 2005 affirming the denial of her 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 has established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On January 9, 2004 appellant, then a 53-year-old rural carrier, filed a claim for a stress reaction resulting from "nonphysical abuse" by the postmaster. She stopped work on January 8, 2004 and did not return.

In a statement received by the Office on March 2, 2004, appellant related that her stress began with the arrival of Dale Everitt, the postmaster. She noted that Mr. Everitt, "called us into the breakroom and said, 'If the old postmaster walked into the [employing establishment] right now I would blow her away with my 45 gun.'" Mr. Everitt "brought his reserve police uniform with a gun into the office [until] we called the union." Appellant related that, when investigators questioned her about the gun, Mr. Everitt heard her responses and "held that against me for many years." She alleged that he told her to move her vehicle even though she had priority to park near the building for loading her delivery car. Mr. Everitt "painted a red line between the workroom floor and his office" and required subordinates to obtain permission before crossing the line. He "click[ed] his heels on the floor" and routinely yelled and humiliated subordinates. Mr. Everitt also altered the established method for casing mail. Appellant and her coworkers won a class grievance and were allowed to change back to the prior method of mail casing. One of appellant's customers complimented her service to Mr. Everitt and he "all but called her a liar." He further told appellant not to "bring back information from other offices…." On January 8, 2004 Mr. Everitt announced that he was taking chains off their vehicles tires and she began feeling panicky because the roads were still snowy.

In a statement dated February 27, 2004, Kim Conwell, a supervisor at the employing establishment, related that Mr. Everitt requested that she come to his office on January 8, 2004. She stated:

> "When I went into his office [appellant] was standing in there with her arms crossed and looking up at the ceiling. [Mr. Everitt] told [her] that he felt her actions were inappropriate when she told him on the workroom floor 'that she was [not] going to have her vehicle chains taken off' after [he] had informed all carriers that the roads were bare and Les Schwab would be over to take the chains off today. [Mr. Everitt] told [appellant] that if she wanted to keep her chains on she should have come into his office after the stand up and discuss[ed] it with him."

Ms. Conwell related that appellant informed Mr. Everitt that she was feeling stressed and needed to go home because she was sick.

In a statement dated March 24, 2004, Mr. Everitt noted that, when he informed all the carriers on January 8, 2004 that he was having the tire chains removed, appellant shook her head and said that she was not having the chains removed from her vehicle. Mr. Everitt told her that they would discuss it after the meeting. He brought appellant to his office to speak with her and told her that he did not appreciate her refusing to follow his instructions or contradicting him in front of other people. Appellant told Mr. Everitt that he "had no right to yell at her." Mr. Everitt stated that he told her that she was the one yelling and that he "was tired of her prima donna attitude." Appellant informed him that she was sick and went home. He denied yelling at appellant.

Appellant, in a statement dated January 9, 2004, noted that on January 8, 2004 Mr. Everitt told all the carriers that he was having the tire chains removed. She "shook [her] head in disbelief" and he yelled at her saying "What do you mean no! You will take off the chains." In Mr. Everitt's office, appellant again protested the removal of the chains because she

delivered mail to side roads that were still covered with snow. He yelled, "[S]hut up you never listen just shut up and listen. You [are] such a prima donna! I do [not] know why you [are] here you [are] such a prima donna!" Appellant stated that she would not deliver mail without chains and he told her that she would be absent without leave. She replied that she was sick and went home upset and crying.

By decision dated June 25, 2004, the Office denied appellant's claim on the grounds that she had not established an emotional condition in the performance of duty. The Office found that she had not established any compensable employment factors.

On July 17, 2004 appellant requested an oral hearing. At the hearing, held on February 24, 2005, she related that Mr. Everitt first became the postmaster in 1984 or 1985. Appellant stated that, at the first weekly meeting, Mr. Everitt informed them that if the former postmaster came in the building he would "blow her away." Mr. Everitt then stated that "if any of you have an accident I [am] going to slam dunk your head against the wall, and I [am] serious." Appellant alleged that Mr. Everitt humiliated, belittled and yelled at his subordinates on a weekly basis. She stated that she won a grievance concerning a change in labeling for carriers. Mr. Everitt also refused to let her park close to the building for loading. Appellant described the incident of January 8, 2004 when he told the carriers that he was removing the tire chains from the postal vehicles. She stated that she told him in his office that the side roads where she delivered mail were slippery. Appellant repeatedly asked Mr. Everitt to stop yelling at her but he did not and called her a prima donna. She noted that she resigned from work.

At the hearing, Karen Debella, a former coworker, addressed the first day when Mr. Everitt gathered the employees together as postmaster. She alleged that he stated "if the past postmaster ever walks in through that door, I [will] blow her away with my 45" and "threatened all the employees and said if you ever had an accident, I [will] slam dunk your head against the side of the wall." Ms. Debella noted that he was a reserve police officer and would bring his gun and uniform to the office before he was told to stop. She described additional actions taken by Mr. Everitt towards her and other coworkers.

Icelia Peterson, a former coworkers, related:

> "I was there the day that Dale Everitt gave that standup that he would blow away the former postmaster, and it was [not] talk. He had a gun. He hung it on a cabinet right beside the door, and when they gave him the order not to bring it in the office anymore, he had a Porsche that he parked right by the back door, and he laid it on the back package tray by the window so you could see it laying there."

She described actions taken against her by Mr. Everitt.

Chuck Howison, a former coworker, also described incidents that occurred with Mr. Everitt. He stated that, the day that appellant wanted to keep the tire chains on, he could hear Mr. Everitt "hollering at her in his office, and my case was the furthest away from his office in the [employing establishment], and you could hear his hollering. I could [not] hear her." Mr. Howison noted that he could not hear any specific words but could tell it was Mr. Everitt

screaming. He noted that his vehicle got stuck in the snow "a couple of times" on January 8, 2002.

By letter dated March 17, 2005, an official with the employing establishment contended that appellant had not supplied adequate medical evidence in support of her claim.

In a decision dated May 10, 2005, the Office hearing representative affirmed the June 25, 2004 decision, finding that appellant had not established 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 her 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.[1] 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[3] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[4] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[5]

Verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances.[6] This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Act.[7] Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the

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[1] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[3] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[4] *See William H. Fortner*, 49 ECAB 324 (1998).

[5] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[6] *Fred Faber*, 52 ECAB 107, 109 (2000).

[7] *Id*.

claimant and supported by the record, may constitute compensable factors of employment.[8] While the Board has held that verbal altercations with a supervisor may, if proven, constitute a compensable factor of employment, not every utterance in the workplace is compensable. The Board must evaluate the reasonableness of the language given the circumstances surrounding the incident. The Board has held that the use of the derogatory epithet "ape" directed at an employee by a supervisor could be compensable,[9] but the Board has found that isolated statements made in frustration such as "I could just kill you,"[10] Or the use of profanity when used to describe the employee but not directed at the employee are not compensable.[11]

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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[12] 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.[13]

ANALYSIS

Appellant attributed her emotional condition to actions taken by Mr. Everitt, the postmaster. She related that he prohibited her from parking her vehicle near the building, changed the method that carriers used for casing mail and decided to remove the snow chains from the carriers' vehicles on January 8, 2004. Appellant also contended that he required subordinates to obtain permission before crossing a red line into his office and told her not to bring back information from other offices. Complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by the Act.[14] 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. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[15] The actions taken by Mr. Everitt in instructing

[8] *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

[9] *Abe E. Scott*, 45 ECAB 164 (1993).

[10] *Leroy Thomas, III*, 46 ECAB 946 (1995).

[11] *Donna J. DiBernardo*, 47 ECAB 700 (1996).

[12] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[13] *Id.*

[14] *See Marguerite J. Toland*, *supra* note 8.

[15] *Id*.

appellant where to park, how to case mail, whether to keep chains on her vehicle, when to come into his office and what information to discuss were within his authority as a supervisor and, absent a finding of error or abuse, are not compensable. Appellant maintained that she and her coworkers won a class action grievance which allowed them to change back to the prior method of casing mail. However, she did not submit any evidence regarding the grievance or whether there was a finding of fault on the part of the employing establishment. Appellant also alleged that she had priority to park near the building for loading and unloading but submitted no evidence to substantiate this allegation. As she has not submitted any evidence establishing error or abuse by Mr. Everitt, she has not established a compensable employment factor as to these allegations.

Appellant also alleged verbal abuse and harassment by Mr. Everitt. Verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances.[16] This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Act.[17] Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.[18] While the Board has held that verbal altercations with a supervisor may, if proven, constitute a compensable factor of employment, not every utterance in the workplace is compensable. The Board will evaluate the factual circumstances and the reasonableness of the language surrounding the alleged incident.

Appellant maintained that Mr. Everitt spoke to her in an abusive manner on January 8, 2004. She related that after the meeting in which he advised that the tire chains would be removed, she went into his office where Mr. Everitt yelled at her because she did not want the chains removed, calling her a prima donna and told her to "shut up." In a statement dated March 24, 2004, Mr. Everitt related that he had a discussion in his office with appellant on January 8, 2004 and told her that he did not like her refusing to follow his instructions and vocalizing her disagreement with his decision in front of coworkers. He denied yelling at appellant but acknowledged saying that he did not like her "prima donna attitude." In a statement dated February 27, 2004, Ms. Conwell, a supervisor, related that she witnessed the conversation between appellant and Mr. Everitt on January 8, 2004. She stated that Mr. Everitt told appellant that she should have expressed her concerns about the removal of the tire chains to him privately. At the hearing, Mr. Howison, a former coworker, related that on January 8, 2004 he heard Mr. Everitt yelling at appellant in his office but could not hear the specific words. While Mr. Everitt may have raised his voice to appellant and called her a "prima donna" on January 8, 2004, these comments do not rise to the level of verbal abuse. The Board has generally held that being spoken to in a raised or harsh voice does not, of itself, constitute verbal abuse or harassment.[19] Appellant, consequently, has not established that the statements by Mr. Everitt constituted verbal abuse.

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[16] *Fred Faber*, *supra* note 6.

[17] *Id*.

[18] *See Marguerite J. Toland*, *supra* note 8.

[19] *Beverly R. Jones*, 55 ECAB ___ (Docket No. 03-1210, issued March 26, 2004).

Appellant further alleged that, when Mr. Everitt first became postmaster in 1984 or 1985, he held a meeting at which he stated that if the prior postmaster came through the door he would "blow her away" with a gun. Mr. Everitt also told appellant and her coworkers that if they got into any accidents he would "slam dunk" their heads against a wall. Ms. Debella related that Mr. Everitt was, at that time, a reserve police officer and brought his gun and a uniform to work until instructed not to do so after complaints by coworkers. As noted, threats of physical violence in the workplace will be compensable under certain circumstances. However, not every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Act.[20] The Board has held that the use of the derogatory epithet "ape" directed at an employee by a supervisor would be a compensable factor.[21] However, the Board has found that isolated remarks made in frustration such as "I could just kill you,"[22] or the use of profanity when used to describe an employee but not directed at the employee are not compensable factors.[23]

The allegations concerning these comments by Mr. Everitt and the fact that he possessed a gun in his position as a reserve police officer relate to actions characterized by the witnesses as taking place on or about the time he first became postmaster in 1984 or 1985. The remoteness in time of these alleged incidents to when appellant stopped work on January 8, 2004 lends weight to the fact that a credible threat was never communicated to appellant and/or her coworkers. While the remarks attributed to Mr. Everitt evidence a bit of bluster and bravado, the witness statements do not support the fact his comments were perceived as a genuine threat to kill either the former postmaster or to slam dunk the heads of coworkers along the walls of the post office. As in the case of *Leroy Thomas, III*,[24] the evidence of record does not substantiate a credible threat made by Mr. Everitt and his remarks do not constitute a compensable factor of employment. As appellant has not established a compensable factor of employment, the Office properly denied her claim.

CONCLUSION

The Board finds that appellant has not established a compensable factor of employment giving rise to her emotional condition.

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[20] *See Fred Faber*, *supra* note 6.

[21] *Abe E. Scott*, *supra* note 9.

[22] *Leroy Thomas, III*, *supra* note 10.

[23] *Donna J. DiBernardo*, *supra* note 11.

[24] *See supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 10, 2005 be affirmed.

Issued: May 4, 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