

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

A.R., Appellant

and

**U.S. POSTAL SERVICE, WESTCHESTER
SQUARE STATION, Bronx, NY, Employer**

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**Docket No. 06-177
Issued: September 12, 2006**

Appearances:
Thomas Harkins, Esq., 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 October 31, 2005 appellant, through counsel, filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 17, 2005 denying his emotional claim on the grounds that it was not sustained in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 20, 2003 appellant, a 34-year-old manager, customer services, filed an occupational disease claim, alleging that his anxiety and clinical depression were due to the failure of the employing establishment to protect him from a subordinate employee who had assaulted him; Office File No. 022036993. Appellant alleged that management failed to take any

action to prevent any future assault or threat to appellant by this employee.¹ John Raciti, appellant's supervisor, noted that he had requested a transfer to Woodlawn. He offered appellant Boulevard Station, which he noted was "the most secured station in the Bronx," but appellant refused the transfer.

Appellant submitted a February 10, 2003 note from Dr. Harold J. Pascal, a treating physician, who opined that appellant was anxious, depressed and had been traumatized and attacked at work.

In a letter dated April 2, 2003, the Office informed appellant that the record was insufficient to support his claim and advised him to submit medical and factual information within 30 days.

Appellant submitted notes dated March 5 and 24, 2003 by Dr. Pascal. On March 5, 2003 Dr. Pascal diagnosed severe post-traumatic stress, depression, abuse at work and concluded that appellant was totally disabled. In the March 24, 2003 note, he opined that appellant was severely traumatized, totally disabled and unable to work.

In an April 16, 2003 letter, Tony Rosario, Postmaster, stated that subsequent to the assault he offered appellant a lower level position at another location where he could become a manager when the position became available. Appellant declined the offer and stated: "Mr. Raciti was working with him and helping him." Subsequently, Mr. Rosario received an emergency call regarding "an altercation that occurred in Westchester Square, concerning an assault or a threat of an assault." Mr. Rosario investigated the matter and determined that appellant failed to handle the situation appropriately and the actions he took could have led to another assault. Mr. Rosario decided to move appellant to Boulevard Station, which was being managed by an acting manager. Approximately two weeks later, appellant met with Mr. Rosario to discuss the transfer and was offered the locations that he stated he would accept. However, appellant did not accept the transfer nor did he send a letter to Mr. Rosario after the meeting ended.

On May 7, 2003 appellant submitted a copy of a temporary restraining order issued against Anthony Aviles to stay away from appellant.

By decision dated June 6, 2003, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an emotional condition in the performance of duty. The Office found that appellant failed to show any administrative abuse or error on the part of the employing establishment with regards to his allegation that it took no action to ensure his safety.

In a letter dated May 19, 2004, appellant, through counsel, requested reconsideration and submitted evidence in support of his request.

¹ On September 5, 2002 appellant was assaulted by an employee at work. The Office accepted the traumatic injury claim, Office File No. 032031206, for cervical and thoracic subluxations and acute post-traumatic stress disorder. *See* Docket No. 05-1083 (issued August 17, 2005). The record reveals that the employing establishment issued a letter of removal to the employee on October 30, 2002.

By decision dated August 16, 2004, the Office denied modification of the June 6, 2003 decision.

Appellant appealed the August 16, 2004 Office decision to the Board on November 1, 2004. On May 13, 2005 the Board issued an order remanding case to the Office for proper assemblage and reconstruction of the case record.²

By decision dated August 17, 2005, the Office again denied modification of the June 6, 2003 decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁵ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from a emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁶ 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.⁷

In emotional condition claims, 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. 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

² Docket No. 05-225 (issued May 13, 2005).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁶ *Lillian Cutler*, *supra* note 3.

⁷ *Kim Nguyen*, 53 ECAB 127 (2001).

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.⁸

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.⁹ 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.¹⁰ An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹¹ Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.¹²

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of his employment. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that management failed to protect him by transferring him to a different work environment as a subordinate employee had assaulted him. The Board notes that an assignment of work including transfer is an administrative function of a supervisor.¹³ An employee's dissatisfaction with not being transferred constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is generally not compensable.¹⁴ Although these types of matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁵ Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.¹⁶ The Board finds that appellant submitted no evidence establish error by management. Mr. Raciti, appellant's

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *Felix Flecha*, 52 ECAB 268 (2001).

¹⁰ *Kim Nguyen*, *supra* note 7.

¹¹ *Barbara J. Latham*, 53 ECAB 316 (2002).

¹² *Id.*

¹³ *Jeral R. Gray*, 57 ECAB ____ (Docket No. 05-1851, issued June 8, 2006).

¹⁴ *Robert Breeden*, 56 ECAB ____ (Docket No. 06-734, issued June 16, 2006).

¹⁵ See *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004); *Janet I. Jones*, 47 ECAB 345 (1996); *Jimmy Gilbreath*, 44 ECAB 555 (1993).

¹⁶ See *Tina D. Francis*, 56 ECAB ____ (Docket No. 04-965, issued December 16, 2004); *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

supervisor, noted that appellant requested a transfer to Woodlawn and he offered appellant a transfer to Boulevard Station, which appellant refused. Mr. Raciti also noted that Boulevard Station was one of the most secure stations. Mr. Rosario, the Postmaster, stated that, after the assault, he offered appellant a lower level position at another location where he could become a manager when the position became available. The Postmaster indicated that appellant declined the offer and noting that Mr. Raciti was working with him and helping him. Mr. Rosario decided to transfer appellant to Boulevard Station and met with appellant two weeks later to discuss the proposed transfer. At this meeting, appellant was offered locations which he had previously indicated he would accept, but no acceptance or any letter from appellant was received. Contrary to appellant's allegation the evidence establishes that management took actions to address appellant's concerns about his safety and provided him with transfer opportunities, which he refused. The record contains no evidence that the employing establishment personnel acted unreasonably or abusively in its actions regarding appellant's safety or transfer. The Board finds that appellant has not established a compensable employment factor with respect to this administrative matter.

Appellant alleged that the employing establishment failed to take any action against the subordinate employee who had assaulted him. Allegations that the employing establishment engaged in unfair disciplinary actions, improperly handled work accommodation requests and mishandled or ignored employee inquiries about workload issues 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.¹⁷ Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.¹⁸ The record shows that the employing establishment issued the assailant a letter of removal on October 30, 2002. There is no evidence demonstrating that appellant continued to work with the employee. The record does not support that the employing establishment either erred or acted abusively in disciplining the subordinate who assaulted appellant. Appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

The Board finds that appellant has failed to establish a compensable factor of employment with regard to his allegation and consequently has not met his burden of proof in establishing his claim for an emotional condition.¹⁹

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

¹⁷ *Robert Breeden, supra* note 14.

¹⁸ *Supra* note 16.

¹⁹ Where a claimant has not established any compensable employment factors, it is not necessary to consider the medical evidence of record. *Peter D. Butt Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 17, 2005 is affirmed.

Issued: September 12, 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