

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

D.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Evanston, IL, Employer)

**Docket No. 06-266
Issued: September 5, 2006**

Appearances:
Preston Jordan, 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 November 15, 2005 appellant filed a timely appeal from a September 6, 2005 decision of the Office of Workers' Compensation Programs, which affirmed the denial of his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the appeal.

ISSUE

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

FACTUAL HISTORY

On March 12, 2002 appellant, then a 52-year-old letter carrier, filed an occupational claim for anxiety and depression, which he attributed to supervisory harassment and discrimination. He stopped work on March 7, 2002 and did not return.

In a May 29, 2002 statement, appellant alleged that management officials had created a hostile work environment by denying his leave and overtime requests and failing to correct an

irregularity in his pay while he was recovering from an ankle injury in 2001. He identified Lorine Bonner and Michael Cain, his up line supervisors, as scrutinizing his performance while in the office and on his postal route. Appellant stated that they asked distracting questions while he cased mail, imposed improper disciplinary measures and had shouted at and unfairly criticized him during 2001 and 2002. He noted that his mail satchel was weighed to assure it contained 35 pounds of mail, which was contrary to the mail scheme and no other employees were required to do so. Appellant stated that he became unable to concentrate on his work and afraid that he would make mistakes which could be used to discipline him. He noted that he had refused Ms. Bonner's request to surrender the keys to his postal vehicle and had been issued a letter of warning by Mr. Cain. Appellant generally alleged retaliation and discrimination, noting his wife had an accepted claim for an emotional condition due to actions by the same officials. He also alleged racial discrimination on the part of Ms. Bonner.

Cynthia James, a coworker and union steward, submitted a February 27, 2002 statement addressing several actions taken by management officials. At a March 30, 2001 meeting, Michael G. Kobler, the postmaster, had stated that appellant was the reason why the postal service was in debt. On April 4, 2001 Mr. Cain walked appellant's route in violation of a rule requiring prior notification and had appellant fill out a form noting the locations of his lunch and break sites. On April 5, 2001 Mr. Cain required that appellant take an official 10-minute break to "feed the meter" while other employees were not required to do so during break time. On April 12, 2001 appellant was wrongly accused of arriving late and parking his car after clocking in. On July 20, 2001 Mr. Cain required that appellant use leave without pay against his wishes. On October 19, 2001 appellant touched a soiled, wet package and became concerned due to an anthrax scare. Mr. Kobler and Mr. Cain became "irate" and told appellant that the postal physician did not do anthrax testing. After appellant left, they told Ms. James that they believed appellant fabricated the incident. On December 26, 2001 Mr. Cain told Ms. James that he would be walking with appellant the next day and to carry 35 pounds at all times. Ms. James asserted that Mr. Cain was "very angry" and unprofessional towards appellant. On December 27, 2001 Mr. Cain counted appellant's mail, walked the route with him and followed appellant to the bathroom. On January 2, 2002 Ms. Bonner issued appellant a letter of warning. Ms. James reiterated these incidents in a May 16, 2002 letter.

Mr. Kobler controverted appellant's claim in an April 29, 2002 letter. He noted that on March 21, 2001 a performance review was conducted and appellant's work was below the minimum requirements expected for his position. Appellant had been observed by management officials performing unsatisfactorily while in the Office, not picking up a handful of letters and observed talking with fellow employees. Between March 2001 through February 2002, management conducted intermittent performance reviews consisting of office and street observations. Mr. Kobler stated that appellant resisted attempts to improve his performance levels and had exceeded the maximum time allowed for routing mail and not efficiently working his route. After several route observations, appellant was issued a letter of warning for failure to follow instructions. On January 17, 2001 he was issued a letter of warning after appellant refused to give the keys to his postal vehicle to his supervisor, Ms. Bonner. On July 25, 2001 he was issued a seven-day suspension for a similar refusal to follow instructions while talking with another employee. On October 24, 2001 he was issued a letter of warning for failing to maintain a regular schedule on 23 occasions during an 8-month period. Appellant contended that his unscheduled absences were protected under the Family Medical Leave Act (FMLA).

On May 16, 2002 Ann Henderson, a supervisor, stated that she had been appellant's immediate supervisor and that he was not treated with dignity and respect by management staff. She characterized management actions an attempt to make life miserable for him. Ms. Henderson noted that she had been off work since July 2001 and was also having trouble with upper management. She stated that close scrutiny of appellant was unnecessary as he was a good employee.

In a May 16, 2002 letter, Greg Nelson, a supervisor, stated that he had observed senior management unnecessarily review appellant's work to the point that it was harassment and an abuse of managerial power. In meetings with other supervisors, appellant's name was discussed very in ways Mr. Nelson felt that the Postmaster and other staff were using excessive monitoring and unnecessary letters of discipline to humiliate appellant and make him miserable.

Appellant also submitted May 2002 statements from coworkers Michael Jernigan, Peggy Johnson, Aida Randazzo, Joyce Rutland, Bruno Velez and Regina Westbrook. They asserted generally that they had witnessed incidents in which Ms. Bonner, Mr. Cain or Mr. Kobler had harassed appellant by shouting at him on the workroom floor, scrutinizing his performance in the station and while delivering his route, weighing his relays and imposing disciplinary actions.

In a May 23, 2001 note, Dr. Jason Smith, an attending osteopath specializing in family practice, found appellant disabled for work from May 12 to 23, 2001. Appellant was released to full duty as of May 24, 2001. In January 26 and February 14, 2002 reports, Dr. Smith diagnosed an anxiety syndrome with depression and paranoia related to supervisory intimidation and pervasive harassment while on the job. He found appellant disabled for work from January 23 to February 2, 2002. In a March 7, 2002 slip, Dr. Smith held appellant off work for 10 days.

On May 14, 2002 Dr. Smith stated that appellant developed an emotional condition due to being made to work extra hours without overtime pay, being followed on his mail route and undergoing frequent searches of his person, locker and trunk. He opined that appellant also sustained unspecified musculoskeletal problems as his supervisors demanded that he carry at least 35 pounds of mail at all times. Dr. Smith stated that, when he held appellant off work, postal supervisors called and asked "for 'warped' statements on whether or not [appellant] could be at work in spite of the clear, detailed off work statement already submitted." He stated that he believed appellant's account of events as the same supervisors attempted to involve him in "hazing" appellant. Dr. Smith found a clear cause and effect relationship between appellant's work environment and his current disability. He held appellant off work indefinitely. Dr. Smith submitted notes through June 27, 2002, reiterating that appellant was totally disabled from January 23, 2002 onward.

In a May 2, 2002 report, Dr. Charles E. Turk, an attending Board-certified psychiatrist, provided a history of insomnia, anxiety and depression that appellant attributed to workplace harassment, close scrutiny, demeaning orders, denial of leave requests and being given assignments impossible to complete within the time allotted. He noted reviewing coworker statements corroborating appellant's account of events. Dr. Turk diagnosed a generalized anxiety disorder and major depressive disorder as the direct result to a negative work environment over the past several years. He held appellant off work indefinitely. Dr. Turk

submitted reports through November 31, 2002, noting continuing treatment for chronic stress arising out of an adverse work situation.

By letter dated May 29, 2002, Mr. Kobler responded to appellant's allegations, denying allegations of discrimination and harassment. He denied that appellant was required to constantly carry 35 pounds of mail on his shoulder. Mr. Kobler noted that letter carriers were required to carry appropriate amounts of mail, up to 35 pounds, to complete each relay without additional trips to the vehicle. He noted that the average weight of appellant's mail satchel was 24 pounds and that letter carriers removed the satchels from their shoulders during delivery and while on break. Mr. Kobler again discussed several performance reviews and the disciplinary actions taken.

On September 5, 2002 the Office prepared a statement of accepted facts. The Office accepted as compensable that, while on his route, appellant had to carry 35 pounds of mail on his shoulder at all times while on his route, except to load up another 35 pounds and no other employee was made to do this. Incidents not accepted as related to his duties included supervisors observing appellant while preparing for mail delivery and while on his route; being given erroneous information concerning the FMLA; or that management erroneously docked appellant's pay while he was held off work by his physician due to an accepted ankle injury. The Office did not accept as factual that supervisors would stand over appellant's shoulder and watch everything he did.

On September 11, 2002 the Office referred appellant, the record and the statement of accepted facts, to Dr. Dixon F. Spivy, a Board-certified psychiatrist, for a second opinion examination. In a December 11, 2002 report, Dr. Spivy noted reviewing the materials sent by the Office and separate documents presented by appellant, who was accompanied by Dr. Turk and appellant's wife. He diagnosed a major depressive episode, single episode with atypical features. Dr. Spivy characterized appellant's presentation as depressed, with intermittent crying and sleep disturbance. He stated that whether appellant's psychiatric condition was work related was another matter as it was not easy to pinpoint anything, which would have provoked this disorder based on his workplace alone. Dr. Spivy noted that there was a great deal of material submitted regarding harassment and unfair treatment in the workplace. As to whether the physical requirements of appellant's job caused or contributed to his condition, Dr. Spivy stated that whether appellant had to carry 35 pounds, more or less, was probably not a major issue and he questioned whether appellant's job duties were related to his illness. He reviewed appellant's treatment by Dr. Turk and noted that appellant had outlined a rather elaborate case for his problems being secondary to intimidation at work. Dr. Spivy commented that the materials presented by appellant were extremely detailed and specific in reciting his symptoms and experiences, which was surprising given how helpless, forlorn and disorganized he presented himself in the physician's office. He stated:

"My surmise is that, as I indicated earlier, he became depressed for reasons probably not related to his work experience and the latter unpleasantness was more the result of his being depressed than causing it. He has his lawyer, his coworkers, his psychiatrist, his osteopath and others presenting a case for his current disability. There is simply no way of knowing whether we have cause or effect here in connection with the alleged unfairness at his job."

Following a request for clarification of his opinion, in a February 14, 2003 report, Dr. Spivy reported that the requirement that appellant carry up to 35 pounds while on his postal route did not aggravate or accelerate appellant's major depressive condition.

By decision dated March 12, 2003, the Office denied appellant's claim on the grounds that he had not established any compensable factors of employment. It found that he had not established that he was the only employee required to carry 35 pounds of mail at all times while on his postal route. The Office found that the allegations pertaining to denials of leave, disciplinary actions and harassment pertained to administrative actions. It also found the witness statements insufficient to establish either harassment or administrative error or abuse. The Office noted that the medical evidence was not reviewed as appellant failed to establish any compensable factors of employment.

On March 25, 2003 appellant requested an oral hearing, modified on April 22, 2003 to a request for reconsideration. In a November 3, 2003 letter, he reiterated his allegations. Appellant asserted that work observations of July 22, 1996 and February 26, 2001, three letters of commendation from former supervisors and customer satisfaction surveys commending his performance established that he was a reliable and efficient letter carrier.

A grievance regarding FMLA denial was resolved on July 14, 2000 at Step 2 with no admission of wrongdoing. It was noted that appellant was not denied FMLA and the only update requested by the employing establishment was medical documentation that appellant did in fact visit his physician. A grievance regarding a July 24, 2001 notice of suspension for failing to follow instructions was resolved at Step 3 with the suspension reduced to an official job discussion.

In a November 3, 2003 report, Dr. Turk opined that appellant did not have any preexisting psychiatric condition and that his disability was caused by the specific workplace events mentioned. He submitted monthly notes from July 2003 to April 2005, finding appellant disabled for work. Dr. Smith submitted a June 22, 2000 note affirming appellant's need for FMLA. He also submitted notes from March 2002 to November 2003, finding that appellant was disabled for work due to his emotional condition.

By decision dated November 6, 2003, the Office initially denied reconsideration on the grounds that his March 3, 2003 letter did not raise substantive legal questions or include new, relevant evidence. In a March 25, 2004 letter, the Office noted that appellant submitted additional evidence with his March 3, 2003 request for reconsideration and would conduct a further merit review.

In a September 6, 2005 decision, the Office denied modification of the March 12, 2003 decision on the grounds that appellant did not substantiate any compensable employment factors.

LEGAL PRECEDENT

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.¹ This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.² To establish a claim for an emotional condition, a claimant must submit factual evidence establishing employment factors or incidents alleged to have caused or contributed to the claimed condition; medical evidence establishing an emotional or psychological disorder; and rationalized medical evidence establishing that the established employment factors caused or contributed to the emotional condition.³

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 his 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.⁴ 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.⁵

Perceptions, alone, are not compensable. The claimant has the burden of establishing by the weight of the reliable and probative evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. 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.⁶ 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.⁷

¹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

² *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

³ See *Jamel A. White*, 54 ECAB 224 (2002).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); *Norma L. Blank*, 43 ECAB 384 (1993).

⁷ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004); *Norma L. Blank*, *supra* note 6.

ANALYSIS

Appellant attributed his emotional condition to harassment and discrimination by certain managers and to error and abuse in administrative review of his work and in the denial of his requests for leave. Such incidents of harassment, if established as factual and arising from the employee's performance of duty, could constitute employment factors.⁸

Appellant alleged abusive and erroneous supervision by Ms. Bonner and Mr. Cain. An employee's dissatisfaction with the way a supervisor performs duties or exercises discretion in assigning work is not compensable absent error or abuse.⁹ In support of his claim, appellant submitted a statement from Ms. James, who noted that on December 27, 2001 Mr. Cain had counted appellant's mail, walked the postal route with him and followed him to the bathroom. However, Ms. James acknowledged that, on December 26, 2001, appellant was properly notified of the route inspection. Her statement does not explain those actions taken by Mr. Cain that would support a finding of harassment, supervisory error or abuse. Mr. Kobler, the postmaster, disputed her assertion that appellant was required to carry 35 pounds of mail on his shoulder "at all times" and discussed the performance expected of the carrier while delivering mail on his postal route. There is insufficient evidence submitted to the record to establish that appellant was treated differently than coworkers, such as being made to use break time to feed a meter. Her description of Mr. Cain and Mr. Kobler becoming "irate" at appellant on October 19, 2001 and of Mr. Cain becoming angry with appellant and "unprofessional" on December 26, 2001 are similarly vague and not sufficient to establish harassment or administrative error.

Appellant also submitted statements from Ms. Henderson and Mr. Nelson, former and present supervisors at his station. Ms. Henderson stated that she had been assigned to scrutinize appellant's work as part of a plan to "get" appellant. Mr. Nelson stated that he observed a pattern of excessive or unnecessary review of appellant's work "to the point where it [was] blatant harassment." However, neither Ms. Henderson nor Mr. Nelson provided any explanation or description of specific incidents or events giving rise to harassment or administrative error or abuse. The Board notes that the witness statements provided by appellant are largely general in nature and lack specific descriptions of the instances alleged as giving rise to harassment or discrimination on the part of the implicated management officials. Mr. Kobler responded to appellant's allegations and provided a review of appellant's performance during the period of March 2001 to February 2002. He discussed specific instances in which appellant's work did not conform to performance standards and explained the several instances of disciplinary letters issued. The evidence of record reflects that a grievance filed pertaining to the denial of FMLA leave was settled with no finding of administrative error on the part of management. It was noted that appellant was not denied FMLA and that management requested updated documentation to support that he was seen by his physician. Similarly, a grievance pertaining to the July 24, 2001 suspension for failing to follow instructions was reduced to an official discussion. Appellant asserted that the employing establishment erred in issuing the letter of warning for refusing to unlock and leave his postal vehicle and a suspension for failure to follow

⁸ *Janice I. Moore*, 53 ECAB 777 (2002).

⁹ *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).

instructions on July 24, 2001. The reduction of his suspension to an official discussion does not establish error or abuse on the part of his supervisors.¹⁰ Although Mr. Nelson asserted that managers issued “unnecessary letters of discipline,” he did not describe any specific instances or dates of such letters. As noted, this evidence is insufficient to establish improper disciplinary actions as a compensable factor of employment.

Appellant generally attributed his emotional condition to anxiety over not being able to perform his position. He stated that excessive supervision made him fearful of making mistakes and “ashamed ... for not being able to live up to [his supervisors’] expectations.” However, as appellant has not established error or abuse on the part of his supervisors, any resultant anxiety must be considered self-generated and not compensable.¹¹ He also attributed his condition, in part, to unspecified acts of retaliation and discrimination, a pay irregularity following a 2001 injury, being denied requested leave and being refused overtime pay. The Board finds that there is insufficient evidence of record to corroborate these assertions. Therefore, appellant has failed to establish these elements as compensable factors of employment.

Although appellant did not establish harassment or supervisory error in the inspection of his postal route, he noted that he had to carry mailbags weighing up to 35 pounds while delivering mail. To this extent, the evidence of record was not contested by management, as Mr. Kobler noted that appellant carried mail averaging 24 pounds but also up to 35 pounds.¹² This is a compensable factor under *Cutler* as it arises in the performance of appellant’s regular duties as a letter carrier. In light of this, the Board must review the medical evidence of record.

Appellant submitted medical evidence from Dr. Smith, an osteopath in family practice, and Dr. Turk, a Board-certified psychiatrist. The Board notes that the medical reports submitted by these physicians rely extensively on a history of employment factors based on appellant’s allegations, which have not been found established by the weight of the evidence of record. The Board has held that medical evidence not based on an accurate medical history of the claim is of diminished probative value.¹³ Dr. Smith based his opinion on causal relationship on a history of supervisory intimidation and “acute pervasive harassment while on the job.” He noted that he believed appellant’s account of events at work and had reviewed the witness statements. In turn, Dr. Turk noted that appellant attributed his emotional status to workplace harassment and administrative errors and described a “negative work environment.” As appellant has failed to establish an adequate factual basis for his allegations of harassment and administrative error, the reports of the attending physicians are of limited probative value.

Appellant was referred by the Office to Dr. Spivy, a Board-certified psychiatrist, for evaluation. It provided a statement of accepted facts which noted that appellant was required to lift mail loads of up to 35 pounds. He provided a report which reviewed the statement of

¹⁰ *Paul L. Stewart*, 54 ECAB 824 (2003); *Mary L. Brooks*, 46 ECAB 266, 274 (1994).

¹¹ See *Donney T. Drennon-Gala*, *supra* note 9.

¹² It is not established that he had to carry the maximum of 35 pounds “all the time” on his route, as alleged.

¹³ See *John W. Montoya*, 54 ECAB 306 (2003). (Medical conclusions based on inaccurate or incomplete histories are of little probative value on the issue of causal relationship).

accepted facts and appellant's allegations concerning workplace harassment. Dr. Spivy noted that appellant presented with symptoms of a severe depression and diagnosed major depression, single episode with atypical features. In discussing appellant's job, he noted that, whether he had to carry 35 pounds, more or less, was not a major issue in the case and questioned whether appellant's job duties and his performance were related to his emotional illness. Dr. Spivy opinion was that appellant became depressed for reasons probably not related to his work experience. The Office requested that the physician provide a supplemental medical reports, noting that the physical requirements of appellant's position as a letter carrier noted that he could carry up to 35 pounds and there was nothing mandating that he had to continuously carry 35 pounds. Dr. Spivy responded that appellant's emotional condition was not aggravated or accelerated by this description of his work duties. The Board finds that the report of Dr. Spivy is sufficient to establish that appellant's work duties under *Cutler* did not cause or aggravate his diagnosed depression. Dr. Spivy provided a reasoned medical opinion based on an accurate description of the requirement that appellant carried up to 35 pounds of mail while on his postal route. He did not support that this work factor caused or accelerated appellant's depression.

CONCLUSION

Appellant has not established harassment as a compensable factor of employment, nor has he established administrative error or abuse on the part of his supervisors in monitoring his work or in taking disciplinary action. He established a compensable work factor under *Cutler*, but the weight of medical opinion establishes that the requirement that he carry up to 35 pounds of mail on his postal route did not cause or aggravate his diagnosed depression.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2005 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: September 5, 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