

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

R.C., Appellant	)	
	)	
and	)	<b>Docket No. 06-1760</b>
	)	<b>Issued: April 17, 2007</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer	)	
	)	

*Appearances:*  
Azita Kerendian, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 26, 2006 appellant filed a timely appeal of the May 16, 2006 merit decision of the Office of Workers' Compensation Programs which denied his claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

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

**FACTUAL HISTORY**

On January 25, 2006 appellant, a 57-year-old mail handler, filed a claim for an employment-related emotional condition. He described his condition as borderline personality disorder and job stress which he first became aware of on June 24, 1998.

In a March 7, 2006 statement, appellant indicated that his relationship with two supervisors, Greg Kemple and Jerome Morgan, had caused him a lot of stress and anxiety over the years. He claimed to have experienced mental anguish as a result of being forced to file numerous complaints against Mr. Kemple and Mr. Morgan. The two managers reportedly harassed appellant on June 9, 1999 when they would not allow him to rotate assignments. Appellant also claimed that on or about June 15, 1999, he asked both supervisors for more work hours based on seniority, but they refused his request. He filed an Equal Employment Opportunity (EEO) complaint regarding this incident.

Another incident occurred on December 6, 1999, when appellant received notice of a 14-day suspension. Because of a series of incidents on November 12 and 13, 1999, the employing establishment charged appellant with failure to follow instructions and conduct unbecoming.<sup>1</sup> Appellant also claimed that on December 12, 2005 Mr. Kemple and Mr. Morgan threatened him with a seven-day suspension for leaning on a machine. He also filed an EEO complaint for another December 12, 2005 incident where management allegedly retaliated against him by removing him from certain machines and replacing him with a less senior operator.

Evidence of appellant's current emotional state consisted of an October 18, 2005 report from William Smith, a licensed clinical social worker, who diagnosed chronic occupational stress dating back to October 24, 1998.

In a decision dated May 16, 2006, the Office denied the claim because appellant did not establish a compensable factor of employment as the cause of his claimed emotional condition. The Office also found the evidence insufficient to establish that appellant sustained an employment-related medical condition.

### **LEGAL PRECEDENT**

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.<sup>2</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such

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<sup>1</sup> On November 12, 1999 appellant allegedly refused to clean up the mail around his machine. The following day, he reportedly referred to Mr. Kemple as "that stupid nigger." During counseling on November 13, 1999 appellant repeatedly refused to take a seat when Mr. Morgan asked him to do so.

<sup>2</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>3</sup> Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>4</sup> 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>5</sup>

### ANALYSIS

Appellant complained generally about having a poor relationship with his supervisors, Mr. Kemple and Mr. Morgan. The mere fact that he and his supervisors did not get along does not, of itself, establish a compensable employment factor. Complaints about the manner in which a supervisor performs his duties generally fall outside the coverage of the Federal Employees' Compensation Act.<sup>6</sup> This principle recognizes that a supervisor generally must be allowed to perform his duties and employees will, at times, dislike the actions taken. But mere disagreement or dislike of a supervisory action will not be actionable, absent evidence of error or abuse.<sup>7</sup>

In this instance, appellant has not established error or abuse on the part of either Mr. Kemple or Mr. Monroe in discharging their supervisory responsibilities. He indicated that he filed numerous EEO complaints against the two and appellant provided evidence relevant to at least four such filings. However, the fact that appellant filed a complaint does not establish error or abuse on the part of the employing establishment.<sup>8</sup> The evidence submitted regarding the EEO complaints sheds very little light on the substance of the complaints. The record reveals that two complaints were scheduled for mediation and another two were the subject of a March 2005 settlement agreement. The outcome of the mediation sessions is unclear and a copy of the settlement agreement is not included in the record. Absent an admission of fault, a settlement agreement does not establish error or abuse on the part of the employing establishment.<sup>9</sup> Given the lack of evidence of error or abuse, appellant's complaints about not being permitted to rotate assignments or work additional hours in June 1999 are not

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Charles D. Edwards*, 55 ECAB 258, 266 (2004).

<sup>9</sup> *Kim Nguyen*, 53 ECAB 127, 128 (2001).

compensable.<sup>10</sup> The December 12, 2005 incident when appellant was removed from working on certain machines is similarly noncompensable.<sup>11</sup>

Appellant also complained about receiving a December 6, 1999 notice of a 14-day suspension. He also claimed to have been threatened on December 12, 2005 with a seven-day suspension for leaning on a machine. Disciplinary actions are administrative in nature and normally fall outside the Act's coverage.<sup>12</sup> However, an employee's emotional reaction to an administrative matter is compensable if the record demonstrates that the employing establishment either erred or acted abusively in discharging its responsibilities.<sup>13</sup> Again, appellant failed to provide any evidence of error or abuse on the part of the employing establishment with respect to the December 6, 1999 disciplinary action. With respect to the alleged December 12, 2005 incident, there is no evidence to either substantiate or refute appellant's claim that he was threatened with a seven-day suspension for leaning on a machine, but to the extent this incident occurred as alleged, the record is also devoid of any evidence of error or abuse.

Despite appellant's numerous complaints about Mr. Kemple and Mr. Monroe, he has not identified a compensable employment factor as the cause of his claimed emotional condition. The Office, therefore, properly denied his claim.

### **CONCLUSION**

Appellant failed to establish that he sustained an emotional condition in the performance of duty.

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<sup>10</sup> As previously noted, an employee's frustration from not being permitted to work in a particular environment or hold a particular position is not compensable. *Lillian Cutler*, *supra* note 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Charles D. Edwards*, 55 ECAB 258, 266 (2004).

<sup>13</sup> *Id.*; *Ruthie M. Evans*, 41 ECAB 416 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 16, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board