

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

L.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Baltimore, MD, Employer)

Docket No. 07-667
Issued: August 22, 2007

Appearances:
Appellant, 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 January 12, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing representative decision dated February 14, 2006, which affirmed a January 13, 2005 decision, denying her emotional condition 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 these issues.

ISSUE

The issue on appeal is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 2, 2004 appellant, then a 45-year-old letter carrier, filed an occupational disease claim alleging an emotional condition due to harassment at work. He alleged that this aggravated his preexisting conditions related to his esophagus, stomach, chest, anxiety and panic

attacks. Appellant first realized that the disease or illness was caused or aggravated by his employment on September 20, 2001. He stopped work on September 22, 2004.

In an August 31, 2004 disability certificate, Dr. Robert T. Liberto, a Board-certified internist, advised that appellant was seen for anxiety, esophageal spasm and chest discomfort, which was aggravated by stress at work. The Office also received an August 31, 2004 note from a nurse advising that appellant was seen for anxiety due to work situations.

By letter dated December 14, 2004, the Office advised appellant that the evidence submitted was insufficient to establish his claim and requested that he submit additional supportive factual and medical evidence. On December 14, 2004 the Office also requested that the employing establishment submit additional evidence. In a December 27, 2004 memorandum, Gwendolyn Senior, an injury compensation specialist with the employing establishment, controverted appellant's claim.

By decision dated January 13, 2005, the Office denied the claim for compensation as the evidence was insufficient to establish that appellant sustained an injury as alleged. The Office found that appellant did not establish a factual or medical basis for his claim.

On January 18, 2005 the Office received additional information from appellant, including copies of letters dated August 21 and September 18, 2004 to appellant's manager, Ms. Bey, and his supervisor, Ms. Y. Haynes, requesting reimbursement for sick leave under the Family Medical Leave Act (FMLA). In a March 14, 1995 report, Dr. James C. Murphy, a Board-certified orthopedic surgeon, noted that appellant had back problems since 1986, when he was bending over a mail cart and picked up a heavy metal tray and felt a "pop." He listed permanent restrictions which included reduced lifting of no more than 10 to 15 pounds.

Appellant requested a hearing which was held on December 6, 2005.¹ In an undated statement, he described factors that he believed contributed to his claim. Appellant stated that, on August 19, 2004, he reported to work and found that the station had a new manager, Ms. Bey. He advised that she immediately approached him in a harsh and aggressive manor, and loudly intimidated and humiliated him in front of his coworkers, which caused them to laugh and embarrassed him. Appellant alleged that Ms. Bey demanded that he tell her his duties and shouted at him to not talk to anyone. He alleged that she stated, "[Y]ou won't run me out of here." Appellant stated that Ms. Bey called him into her office and requested that he repeat his duties again and demanded that he bring in copies of his "paperwork." He left her office in "extreme fear and pain" and was "full of anxiety, stomach and chest pain" and began having nightmares and difficulty sleeping. Appellant stated that, on August 20, 2004, Ms. Bey ordered

¹ During the hearing appellant described the circumstances which he believed contributed to his condition. He noted that he had a previous claim for harassment and discrimination dating back to 1997 when he was harassed, verbally abused, and threatened by his supervisors, which was accepted. Appellant further alleged that he had an Equal Employment Opportunity (EEO) complaint which was settled in 2001. He alleged that his settlement included that he work in a modified carrier position, with the promise not to harass him anymore. Appellant alleged that, if the employing establishment harassed him, he could reinstate the EEO complaint.

him to her office in an intimidating and harassing manner and that, when he attempted to give her the requested documentation, she yelled that she did not want to see anything. He noted that he left her office with a panic attack and stated that she later apologized. On August 24, 2004 appellant returned to work after being off work since August 21, 2004 and became withdrawn. He alleged that, after his supervisor, Mr. Wilson, asked for medical documentation, Ms. Bey and “management officials” decided not to pay him as “punishment.” Appellant asserted that Ms. Bey stood over him and watched him while he was eating his lunch and while on his break. On August 26 and 27, 2004 Ms. Bey followed him around in an attempt to “agitate” him. On August 30, 2004 appellant alleged that Supervisor Haynes yelled and screamed at him in front of coworkers for delivering the mail, causing a panic attack. He stated that management refused to sign his sick leave form. Appellant did not go to work on August 31, 2004 because he was afraid of the hostile environment and his doctor found that he was incapacitated. On September 20, 2004 Ms. Bey was upset that he would not work outside of his restrictions, and punished him by taking away his assigned duties and placed him in a chair, away from his coworkers, in which he was not allowed to get up without asking permission. Appellant stated that management refused to accept his doctor’s reports and he was treated different from his coworkers. He alleged that, on September 20, 2004, Ms. Bey was “outraged” because he sent a certified letter requesting payment for his sick leave. Appellant asserted that she yelled and told him not to send her another certified letter. On September 28, 2004 he alleged that Ms. Bey attempted to give him a letter of warning that was without merit.

In a January 13, 2000 routing slip, Ms. Haynes indicated that appellant came to work in September 2004 and was not getting along with the acting manager, Ms. Bey, at the Franklin Station. She noted that Ms. Bey was not allowing appellant to leave the building to use the government car as he would like as he had other assignments that needed to be done at that time.

On December 8, 2005 the Office received treatment records from Dr. Liberto dated May 5, 1997 to August 12, 2005. Dr. Liberto’s comments included that appellant related that he was under stress, that he felt “pushed and pushed on job,” and that he felt that he was being driven out of work. He diagnosed anxiety and stress disorder. In his treatment notes dated August 31, 2004, Dr. Liberto advised that appellant related that on the previous day his supervisor was “hollering and fussing” and he believed that his supervisor was trying to “break” him. He diagnosed an anxiety episode and stress. Dr. Liberto noted that on September 22, 2004 appellant related that he was being harassed on the job.

In a September 23, 2004 statement, James Jennifer, a coworker, noted on August 19, 2004 Ms. Bey “jumped” on appellant and “started hammering him about the ‘CFS’ case and told him she’d better not see him talking to anyone.” He alleged that she ordered appellant to go to her office and that he was embarrassed and intimidated. Mr. Jennifer noted that on August 20, 2005 appellant was again ordered into Ms. Bey’s office and, when he came out of the office, he was nervous and distraught. In a September 2, 2004 statement, he confirmed that, on August 30, 2004, he witnessed Supervisor Haynes yelling and screaming at appellant on several occasions in front of coworkers. Mr. Jennifer contended that management was harassing appellant. In a separate statement, he noted that, on or about September 22, 2004, he observed Ms. Bey humiliate appellant by making him sit in a chair where he could not move without permission. Mr. Jennifer alleged that each day appellant came to work she would make him sit in his chair

and ask permission to get up. In a September 23, 2004 statement, Anna Janic, a coworker, alleged that, on September 20, 2004, Ms. Bey became angry with appellant when she requested that he file mail in the P.O. Box section, and he informed her that this would violate his restrictions. She alleged that Ms. Bey punished appellant by telling him not to go on the workroom floor and by taking an assignment away from him and asking her to do it. Ms. Janic stated that Ms. Bey yelled at appellant and told him to go in her office. She opined that appellant had done nothing to provoke the intimidation and spitefulness. In a January 7, 2005 statement, Rick Encina, a union steward, alleged that, on August 20, 2004, appellant requested that he meet with Ms. Bey to discuss an incident that occurred on that day that involved her yelling and intimidating him. He alleged that Ms. Bey refused to meet with him. Mr. Encina stated that on September 30, 2004 appellant requested his assistance regarding the status of a sick leave request. He concluded that appellant was the only employee being asked to complete that form and that he was being singled out.

In a November 3, 1997 report, Dr. Anwar Khokhar, Board-certified in internal medicine, diagnosed a duodenal bulb ulcer, diffuse gastritis, and an inflamed pyloric channel and noted that appellant had a lot of pressure from his job. In a March 10, 1998 report, Dr. Carlos A. Milan, a psychiatrist, diagnosed major depression. On September 30, 1998 Dr. Liberto noted that appellant had gastritis and an active duodenal ulcer which may have been caused by stress. The Office received numerous progress notes from various physicians at the primary care outpatient clinic dating from August 30, 2004 to October 6, 2005. It also received an April 2004 psychological evaluation pertaining to a January 31, 2005 event from Dr. John A. Cooper and Dr. Edward G. Singleton, psychologists.

In a September 20, 2001 settlement agreement, appellant accepted a permanent modified job offer. He submitted a list of incidents dating from 1995 to June 26, 1998 and a July 28, 2001 notification of personnel action.

On December 21, 2005 the Office provided appellant and the employing establishment with a copy of the hearing transcript and allowed 20 days for comments. By letter dated January 16, 2006, appellant informed the Office that he had not received a response from the employing establishment.

By decision dated February 14, 2006, the Office hearing representative affirmed the Office's January 13, 2005 decision, as modified to find that the several factors had occurred in the performance of duty. The Office accepted that, on August 19, 2004, appellant came to work after being off and found a new acting manager, Ms. Bey, who verbally attacked him before he could put his coat down, asking him what his assignment was and telling him not to talk to anyone. Ms. Bey also told him that the work he did was performed incorrectly, despite never having worked for her. She yelled at him and this triggered his anxiety. On August 30, 2004 Supervisor Hanes yelled at appellant, after he returned from delivering express mail, in front of his coworkers and continued to do this the entire day. Appellant left and went to the emergency room. On September 20, 2004 Ms. Bey became upset with him for not working outside of his restrictions. When appellant informed her of his restrictions, she became upset and humiliated him by making him sit in a chair where he could not get up without seeking permission. When appellant went to deliver the express mail, she took the mail from his hand and gave it to

someone else and yelled at him. The hearing representative noted that the employing establishment was given an opportunity to comment on appellant's allegations but did not submit any statement refuting his allegations. The hearing representative found that other claimed factors were either not compensable or were not established as having occurred as alleged. The hearing representative found that the medical evidence was insufficient to establish a causal relationship between the emotional condition and the established work factors.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² 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.³

An employee 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.⁴ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.⁵

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 the 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an emotional condition as a result of several incidents involving his supervisors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment retaliated against him by giving him a letter of warning on September 28, 2004, the Board finds that these allegations 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.⁸ Although the handling of disciplinary actions, are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁹ However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ In this instance, appellant's allegations are not supported by the record as he has not submitted sufficient evidence to show that the employing establishment retaliated or acted improperly in this manner. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant also alleged that the employing establishment was noncompliant in processing his medical claim forms and refusing to pay for his leave. He alleged that he brought in his medical documentation on August 24 and September 8, 2004, but the employing establishment refused to pay him. However, there is nothing in the evidence to support that these events occurred, as alleged. The processing of medical leave forms would be an administrative matter.¹¹ Appellant has not submitted evidence showing how the employing establishment acted improperly toward him in this matter. Thus, he did not establish any compensable factors of employment with regard to these matters.

Appellant also alleged that he was harassed by his supervisors. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹² In the present case, appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his

⁸ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ See for example, *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004). See *David C. Lindsey, Jr.*, 56 ECAB ____ (Docket No. 04-1828, issued January 19, 2005) (generally, actions of the employing establishment in matters involving the use of leave are not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

supervisors or coworkers with regard to certain claimed incidents.¹³ Appellant alleged that his supervisors engaged in actions which he believed constituted harassment and discrimination. For example, he alleged that he was harassed, watched and followed¹⁴ by Ms. Bey, on August 18 and 24, 2004, screamed at by Ms. Bey on September 24, 2004 and placed in a chair. Appellant also alleged that his supervisors laughed at him and were pressuring him. However, he provided no corroborating evidence, such as witness statements, to establish that these actions actually occurred.¹⁵ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination on these occasions.

However, appellant has established the following compensable factors of employment where he claimed that he was harassed or verbally abused.¹⁶ They include that on August 19, 2004 he came to work after being off and found a new acting manager, Ms. Bey, who verbally attacked him before he put his coat down. Additionally, while Ms. Bey verbally attacked appellant, she asked him what his assignment was and told him she did not want him talking to anyone. She also informed appellant that his work was performed incorrectly, despite his never having worked for her. On that same date, Ms. Bey screamed and yelled at appellant. Appellant has also established that on August 30, 2004 he was delivering express mail in accordance with his settlement agreement and when he came back to the employing establishment, Supervisor Hanes was yelling and screaming at him in front of his coworkers and continued to do this the entire day. Additionally, on September 20, 2004, Ms. Bey became upset with him for not working outside of his restrictions, and when appellant informed her of his restrictions, she became upset and humiliated him by making him sit in a chair and ordered that he could not get up without permission. Appellant also established that, when he went to deliver the express mail, she took the mail from his hand, gave it to someone else and yelled at him. The Board finds that these incidents are established as they are sufficiently supported by statements of appellant and coworkers who witnessed the incidents and because the employing establishment did not submit evidence to refute that they occurred as alleged.

Appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁷

¹³ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ Allegations that the employing establishment attempted to place an employee in unacceptable positions and improperly monitored work activities fall into the category of administrative or personnel actions. *Sandra Davis*, 50 ECAB 450 (1999).

¹⁵ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁶ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment. *David C. Lindsey, Jr.*, 56 ECAB ____ (Docket No. 04-1828, issued January 19, 2005).

¹⁷ See *William P. George*, *supra* note 15.

The medical evidence submitted in support of his claim included several reports from his treating physician, Dr. Liberto. In his August 31, 2004 disability certificate, Dr. Liberto indicated that appellant was seen for anxiety, esophageal spasm and chest discomfort, which was aggravated by stress at work. However, he did not identify any of the accepted work factors as causing appellant's stress. Dr. Liberto also provided treatment notes and disability certificates dating from May 5, 1997 to August 12, 2005. He diagnosed anxiety and stress disorder and indicated that appellant related that he was under stress, and felt "pushed and pushed on job," and felt he was being driven out of work. In treatment notes dated August 31, 2004, Dr. Liberto advised that appellant related that yesterday, his supervisor was "hollering and fussing" and believed that his supervisor was trying to "break" him. He diagnosed an anxiety episode and stress. However, while Dr. Liberto noted that appellant related and provided a diagnosis, he did not provide an opinion as to the cause of appellant's stress. In his September 22, 2004 report, he again noted that appellant related that he was being harassed on the job, but he did not offer an opinion on causal relationship in which he identified the accepted employment factors and provide findings as to how he arrived at his conclusion. To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, states whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of his or her opinion.¹⁸

Additionally, the Office received reports dating back to March 14, 1995, numerous progress notes from various physicians at the primary care outpatient clinic dating from August 30, 2004 to October 6, 2005 and an April 28, 2005 report from Drs. Cooper and Singleton. However, these reports did not specifically reference the accepted employment factors or explain how such factors caused or contributed to appellant's claimed condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁹

The Office also received an August 31, 2004 note from a nurse advising that appellant was seen for anxiety due to work situations. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions do not constitute medical evidence and have no weight or probative value.²⁰

The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed conditions are causally related to the accepted compensable employment factors.

¹⁸ *J.M.*, 58 ECAB ___ (Docket No. 06-2094, issued January 30, 2007).

¹⁹ *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006).

²⁰ See *Jan A. White*, 34 ECAB 515, 518 (1983). See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated February 14, 2006 is affirmed.

Issued: August 22, 2007
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