



worked at the Groton Post Office from May to September 2005. Postmaster Eileen Kelty caused appellant to feel that he was unable to perform his job and she did not like or trust him. She yelled at him in front of his subordinates. Appellant's ability to perform his job was hindered because his decisions were controlled by management, such as his decisions involving scheduling of carriers. He was improperly told to discipline employees. Appellant felt like a "worthless person" and was treated unfairly. After he had worked at the employing establishment for one month, unnamed "visitors" told him that Ms. Kelty had indicated that he could be disciplined. Appellant indicated that when he first began working at the employing establishment his sister passed away and his nephew attempted suicide.

Ms. Kelty stated that on July 18 and 20, 2005 appellant requested leave to attend to family and personal problems. Prior to filing his claim, he did not advise her of any inability to perform his job or any concerns or complaints. Appellant only indicated to her that once he reached his "comfort zone" she would see his management style.

Anne Darling, a customer service supervisor, stated that for two weeks in July 2005 she assisted Ms. Kelty because appellant was one of two new associate supervisors. Appellant was assigned to be the morning delivery supervisor. Ms. Darling stated that appellant was not capable of handling the delivery unit, even with the help of another associate supervisor. She listed specific duties that appellant failed to perform. Ms. Darling told appellant that in order for him to succeed as a manager, he needed to take the initiative and follow through with the discipline of carriers who were not performing satisfactorily. On one occasion, a carrier failed to follow appellant's specific instructions not to deliver third class circulars so that first and second class mail would be delivered timely that day. Appellant did not issue a letter of warning to the carrier as instructed by Ms. Kelty. Instead, he submitted a written leave request and left the building without talking to Ms. Kelty. Appellant sometimes left early without advising anyone and arbitrarily changed his days off.

Diane Smith, an associate supervisor, stated that she and appellant began working at the Groton Post Office at the same time. She offered the carrier supervisor position to him and she took the customer service supervisor position. Within the first week appellant's sister passed away suddenly and he took emergency annual leave for 10 days. When he returned, other supervisors helped him get adjusted to his position. However, appellant had continuing difficulty with his supervisory tasks such as explaining expectations to the carriers, managing the challenges of scheduling and performing street supervision. Despite the assistance from Ms. Darling and other managers, appellant's performance did not improve and he began to express dissatisfaction with his job.

Edgar Rivera, a customer service supervisor, stated that appellant had difficulty with communication and working with others within established office procedures. Appellant lacked initiative and was stubborn. He did not consult with other supervisors before making office or personnel decisions that affected operations at the employing establishment. Appellant sometimes failed to adhere to his assigned work schedule. He sometimes arrived late to work and left early.

On September 2, 2005 the Office asked appellant to provide additional evidence to include a detailed description of incidents or conditions that contributed to his emotional condition, with specific information such as relevant dates, locations, employees involved and what occurred.

Appellant submitted reports from a nurse.

By decision dated October 7, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that his emotional condition was causally related to a compensable factor of employment.

Appellant requested reconsideration and submitted additional evidence.

In a February 8, 2006 report, Dr. Bhavani Nagalla indicated that appellant's job aggravated his post-traumatic stress disorder and anxiety/panic disorder. The report listed appellant's complaints regarding his treatment by his supervisors.

By decision dated May 12, 2006, the Office denied modification of the October 7, 2005 decision.

Appellant requested reconsideration. He submitted no additional evidence or argument.

By decision dated December 1, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant further merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

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

The Board has held that 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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation

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<sup>1</sup> *Pamela D. Casey*, 57 ECAB \_\_\_\_ (Docket No. 05-1768, issued December 13, 2005); *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1573, issued November 30, 2004).

Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.<sup>2</sup>

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of the employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.<sup>4</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that he was unfairly treated at the employing establishment and made to feel like a "worthless person." He alleged that Ms. Kelty caused him to feel that he was unable to perform his job, did not like or trust him and yelled at him in front of his subordinates. Appellant's ability to perform his job was adversely affected because his decisions were controlled by management. He was improperly told by his supervisors to discipline employees. After appellant had worked at the employing establishment for one month, unnamed "visitors" told him that Ms. Kelty indicated that he could be disciplined.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.<sup>6</sup> However, for harassment and discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.<sup>7</sup> Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>8</sup>

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<sup>2</sup> *Id.*; see also *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Id.*

<sup>4</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> See *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>6</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>7</sup> See *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>8</sup> *Donna J. DiBernardo*, 47 ECAB 700 (1996).

Ms. Kelty stated that she was not aware that appellant had any complaints concerning his treatment at work or felt that he was unable to perform his tasks until he filed his claim form. Ms. Darling stated that appellant was not capable of handling the delivery unit, even with the help of another associate supervisor. She told appellant that, in order for him to succeed as a manager, he needed to take the initiative and follow through with the discipline of carriers who were not performing satisfactorily. On one occasion, a carrier failed to follow appellant's specific instructions but he did not issue the letter of warning as instructed by Ms. Kelty. Appellant sometimes left early without advising anyone and changed his days off. Ms. Smith stated that she and other supervisors attempted to help appellant get adjusted to his position. However, appellant had continuing difficulty with his supervisory tasks such as explaining expectations to the carriers, managing the challenges of scheduling and performing street supervision. His performance did not improve and he began to express his dissatisfaction with his job. Mr. Rivera stated that appellant had difficulty with communication and working with others and lacked initiative. Appellant did not consult with other supervisors before making office or personnel decisions. He sometimes failed to adhere to his assigned work schedule. Appellant sometimes arrived late to work and left early.

The Board finds that the evidence of record does not establish appellant's allegations as factual. None of the employment incidents or situations alleged as the cause of his emotional condition was supported by probative and reliable evidence, such as witness statements. The statements from appellant's supervisors and an associate supervisor do not corroborate his allegations of discrimination or harassment. As there is insufficient evidence to establish appellant's allegations as factual, they cannot be considered as possible compensable employment factors.

Appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his claim.<sup>9</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act<sup>10</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

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<sup>9</sup> Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

<sup>10</sup> 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>11</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

Appellant requested reconsideration but submitted no additional evidence or argument. Because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or constitute relevant and pertinent evidence not previously considered by the Office properly denied his claim.

### **CONCLUSION**

The Board finds that appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

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<sup>11</sup> 20 C.F.R. § 10.606(b)(2).

<sup>12</sup> *Id.* at § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 1 and May 12, 2006 are affirmed.

Issued: May 10, 2007  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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