

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

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**D.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Madison, AL, Employer**

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**Docket No. 07-1939  
Issued: January 16, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 17, 2007 appellant filed a timely appeal from November 16, 2006 and May 4, 2007 decisions of the Office of Workers' Compensation Programs denying his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant's claimed emotional condition is causally related to a compensable factor of his employment.

**FACTUAL HISTORY**

On August 10, 2006 appellant, then a 50-year-old postmaster, filed a claim for an emotional condition alleging that he developed stress and high blood pressure due to harassment by management and coworkers. He alleged that staffing levels were inadequate at the employing establishment.

The employing establishment controverted appellant's claim. On August 21, 2006 Julia Boykin, appellant's manager, denied that she had ever harassed him. She had no knowledge of any harassment by his coworkers. Ms. Boykin stated that management provided the appropriate staffing, equipment and supplies for appellant to be successful in his position. Appellant stopped work on January 26, 2006. A notice of proposed removal was issued on August 1, 2006 due to appellant's unsatisfactory attendance and failure to comply with postal regulations and procedures.

By letter dated October 12, 2006, the Office advised appellant to submit additional factual and medical evidence. No additional evidence was submitted.

By decision dated November 16, 2006, the Office denied appellant's claim on the grounds that the factual and medical evidence failed to establish fact of injury.

Appellant requested a hearing that was held on February 26, 2007. He testified that management conducted a staffing level review after he stopped work, which showed that four additional clerks were needed to properly staff his postal facility. Appellant expressed his concern that staffing was inadequate to Ms. Boykin but she merely told him to go home. He testified that employees filed Equal Employment Opportunity (EEO) complaints to harass him and that a study conducted by the inspector general's office supported his allegation. Appellant submitted a January 4, 2006 investigative report in which an agent in the inspector general's office, David Poarch, stated that there was no evidence that appellant committed timekeeping fraud or misused postal property to conduct a real estate business as alleged by certain employees. However, the investigation revealed security and revenue accountability concerns. Appellant did not always lock the door leading to the retail unit and workroom floor. He did not always require that managers perform cash counts of the clerks' cash drawers. Appellant submitted a May 1, 2006 hospital discharge report. Dr. Naila Siddiqui indicated that appellant was hospitalized on April 26, 2006 for psychiatric and cardiac evaluation due to his allegations of a stressful work environment. An electromyogram was normal. Dr. Siddiqui did not provide any diagnosis or address causal relationship.

Responding to a transcript of appellant's testimony at the hearing, Ms. Boykin stated that reviews of the staffing levels at his postal facility were conducted in May 2006 and March 2007. The reviews did not find that additional positions were needed. Ms. Boykin stated that the August 1, 2006 notice of proposed removal was issued because appellant's attendance was unsatisfactory and he failed to comply with employing establishment procedures regarding overages and shortages, key and vending accountability, box service, retained cash credit accounts and the accountability of credit cards and trust accounts. She indicated that management found no evidence that anyone had harassed appellant.

By decision dated May 4, 2007, the Office hearing representative affirmed the denial of appellant's emotional condition claim. He modified the November 16, 2006 decision to find no compensable factor of employment.

## LEGAL PRECEDENT

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 coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.<sup>3</sup>

When working conditions are alleged as factors in causing disability, 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> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>5</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.<sup>6</sup> Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.<sup>7</sup> When the matter asserted is a compensable factor of employment and the evidence of record establish the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.<sup>8</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

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

<sup>5</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>6</sup> *See Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>7</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>8</sup> *See Charles D. Edwards*, 55 ECAB 259 (2004).

## ANALYSIS

Appellant alleged that his emotional condition was caused by staffing shortages, an improper notice of proposed removal and harassment by management and employees.

The allegations of inadequate staffing and unfair disciplinary actions concern personnel or administrative matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>9</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> Ms. Boykin stated that management provided the appropriate staffing, equipment and supplies for appellant to be successful in his position. She stated that reviews of the staffing levels at appellant's employing establishment conducted in May 2006 and March 2007 did not find that additional staffing was needed. There is insufficient evidence that management erred or acted abusively in its handling of the staffing at appellant's postal facility. Regarding his allegation that management unfairly issued a notice of proposed removal on August 1, 2006 Ms. Boykin stated that the notice was issued due to appellant's unsatisfactory attendance and failure to comply with postal regulations and procedures regarding overages and shortages, key and vending accountability, box service, retained cash credit accounts and the accountability of credit cards and trust accounts. A January 2006 investigation by the inspector general's office revealed security and revenue accountability problems, including his failure to lock the door leading to the retail unit and workroom floor and to require that managers perform cash counts of the clerks' drawers. This investigation supports the basis provided by Ms. Boykin for the notice of proposed removal. The record does not establish that the disciplinary action was baseless or otherwise improper. Accordingly, there is insufficient evidence to establish that management erred or acted abusively regarding the notice of proposed removal. Because there is insufficient evidence of error or abuse in the handling of these administrative or personnel matters, these allegations are not deemed compensable factors of employment.

Appellant alleged harassment by management and employees. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. He must support his allegations with probative and reliable evidence.<sup>11</sup> The record shows that the inspector general's office conducted an investigation into employee allegations that appellant was conducting personal business on work time. The investigation concluded that there was no evidence of wrongdoing by appellant. However, the fact that the employee's allegations were not substantiated does not establish that it was improper for the employing establishment to conduct the investigation. Appellant also alleged that employees filed EEO complaints in order to harass him. There is no evidence of record, such as an EEO decision, that any EEO complaint filed against appellant was retaliatory or without merit. Ms. Boykin denied that she ever harassed appellant and there is insufficient evidence to establish that she did so. The Board finds that there is insufficient evidence to

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<sup>9</sup> *Id.*

<sup>10</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>11</sup> *Cyndia R. Harrill*, 55 ECAB 522 (2004).

establish that appellant's allegations of harassment and discrimination are factual. Therefore, these allegations are not deemed to be compensable employment factors.<sup>12</sup>

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to a compensable factor of employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 4, 2007 and November 16, 2006 are affirmed.

Issued: January 16, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>12</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).