

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

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Darlington, PA, Employer**

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**Docket No. 09-212
Issued: August 14, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 28, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated March 10 and September 24, 2008, denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On January 9, 2008 appellant, then a 53-year-old postmaster, filed a claim alleging that his emotional condition was caused or aggravated by his job. He indicated that working with the public and supervising employees caused his severe depression and high levels of anxiety. Appellant stated that he first became aware of his condition and realized that it was due to his employment on December 11, 2004. He indicated that he had been on detail in other positions

for the previous three years and had not worked in his postmaster job. The employing establishment advised that appellant was last exposed to the claimed working conditions and/or factors on December 11, 2004 and stopped work on January 8, 2008. In a January 14, 2008 statement, Donald Snyder, a district operations manager, explained that on January 3, 2008 he told appellant that there was no other available work for him and he was to return to the postmaster position at the employing establishment. He indicated that appellant told him that he was mentally and physically unable to return to the postmaster position at the employing establishment but was able to work in less stressful jobs. Appellant indicated that he would file a claim if he had to return to his former position.

In a January 22, 2008 letter, the Office advised appellant that he needed to submit additional information in support of his claim. This included a discussion and evidence regarding the claimed work factors as well as a physician's report relating an injury or condition to the identified work factors. In reports dated December 21, 2007 and January 8, 23 and 31, 2008, Dr. Michael Frantz, a Board-certified psychiatrist, noted that appellant had been in treatment for major depression and anxiety since September 2004 and opined that the duties of his past job significantly exacerbated his conditions. He further restricted appellant from working or dealing with the public directly. The Office also received a medical report, which noted that appellant had a 25-pound lifting restriction and a chiropractic report, which noted that his conditions involving the neck, back, shoulders, headaches, muscle tension etc. were more frequent and intense when he worked as a postmaster.

In an undated statement, appellant indicated that he sought and was granted various assignments over the period 2005 through 2007. He stated that his anxiety and stress levels rose when he was told no other assignments were available and he had to return to his former position as postmaster. Appellant attributed his stress while he worked as a postmaster to an increasingly difficult time dealing with the public at the retail counter; management of the employees; the constant barrage of training and senseless reports required by the district Office; the constant "micro management" from his supervisors; and the constant concern of an employee having an accident. Regarding contact with the public at retail counter, he alleged that the customers were rude; he had to field complaints about matters that were out of his control; he did not have the necessary change on hand when customers presented \$20.00 and \$50.00 bills; customers would arrive 2 minutes before closing time with 10 to 15 minutes of transactions; the employing establishment box customers did not adhere to postal regulations concerning the retrieval of their mail and addressing their employing establishment box; he received constant verbal abuse from customers about stamp prices, why they received mail in an employing establishment box, etc. Appellant stated that his employees had various personalities; were constantly bickering over childish matters among themselves and the union protected such employees. He further stated that he did not have time to do the training and reports required by the district Office while supervising employees, getting mail delivered and working the retail window. Appellant also attributed his stress to his inability to leave the stress and tension from work at work. He stated that he did not file a grievance because as a postmaster he was a nonbargaining unit employee. Appellant also stated that he did not file an Equal Employment Opportunity complaint because he did not feel any discrimination.

In a February 21, 2008 letter, Mr. Snyder responded to appellant's allegations. He stated that appellant's supervisory duties at the employing establishment were minimal as there were

two part-time clerks and two full-time rural carriers. Mr. Snyder stated on an average day a clerk was present in the office with appellant for less than four hours and the rural carriers were present in the office for approximately three hours. He stated that the clerks and rural carriers required very little instruction in their assigned duties. Mr. Snyder advised that the staffing in the employing establishment was higher than normal for that level of office so appellant's daily workload was reduced relative to similar offices. He stated that he was not aware of any conflict between appellant and his employees and/or higher level managers. Mr. Snyder advised that there was no record of appellant's performance being unacceptable or any history of customer complaints during appellant's tenure as postmaster. He stated that the actual customer visits to the employing establishment during 2005, when appellant was postmaster, averaged approximately 12 customers per hour. Mr. Snyder stated that this customer contact was shared with the other employees and was not the sole responsibility of appellant. He advised that there was no detrimental work factors within the employing establishment and appellant was successful as postmaster. Mr. Snyder noted that he requested and received higher level postmaster positions, which required extensive travel, training, deadlines, intense assignments and overtime and no problems were reported by him. He stated that appellant's reasons for not wanting to return to the postmaster position were not consistent with his observations, his past performance as postmaster and the fact that appellant routinely sought out and received much more difficult assignments in conjunction with his postmaster duties.

By decision dated March 10, 2008, the Office denied appellant's claim finding that he did not present sufficient evidence to establish a compensable employment factor in the performance of duty. On May 28, 2008 appellant, through his attorney, requested a telephone hearing before an Office hearing representative.

At the July 15, 2008 hearing, appellant testified that he had not worked since January 7, 2008. He noted that his application for disability retirement was pending and that he was undergoing orthopedic treatment for a nonwork-related left shoulder injury. Appellant stated that he began working as a postmaster in September 1994 and was overwhelmed by staff cuts and reduced hours. He stated that the employing establishment did not take into account time constraints and other factors of the daily operations. Appellant indicated that he worked unbilled hours and took extra steps to ensure that work was getting completed to lessen the amount of overtime. He stated that he felt intimidated by upper management if he worked overtime hours. Appellant stated that he was promoted to two new offices, but he encountered more problems with the additional staffing. He reported frustration with employees and the fact that he was not able to enforce discipline because of union-protected employees. Appellant noted frustration with agency-wide mandates/orders/procedures, stating that it required more of his time and took time away from customer issues. He explained that using clerks or other staff to assist customers caused budget overruns, which affected his bonus. Appellant noted that additional employees resulted in more work stressors. He stated that he could not do all of his required duties in a workday but he did not ask for help because of an unwritten rule by upper management that one did not ask for help. Appellant noted that he endured customer complaints on a daily basis and became frustrated by the continuous and recurring nature of the complaints. He stated that he took the customer complaints personally. Appellant stated that he had difficulty performing his usual duties due to time constraints and the pressures of customer issues/complaints. He stated that he was never disciplined and was a good worker who was commended for his work. Appellant stated that he filed the claim after learning he was to be

transferred back to the employing establishment. He felt the transfer was a result of reprisal for upsetting the wrong person, although he had no proof.

After the hearing, the Office received medical reports from Dr. Richard Spector, a Board-certified psychiatrist and an August 13, 2008 statement from Mr. Snyder, who noted that appellant had been promoted to two higher level positions since 1994 and it defied logic that he would claim stress from his duties and responsibilities in a lower level office. Mr. Snyder indicated that appellant was being returned to his regular position at the end of a detail and denied that anything more was involved. He noted that appellant's complaints about the customers were self-generated and there was no evidence to support any hostility by employees toward him. Mr. Snyder denied that appellant was overburdened as a workload evaluation of the employing establishment indicated that it was the same as other offices.

By decision dated September 24, 2008, the Office hearing representative affirmed that appellant had not substantiated a compensable factor of employment as contributing to his condition.

LEGAL PRECEDENT

To establish an emotional or stress-related condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related 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 stress-related condition.¹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.² 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.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case, of *Lillian Cutler*,⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability

¹ See *Pamela D. Casey*, 57 ECAB 260 (2005).

² *Dennis J. Balogh*, 52 ECAB 232 (2001).

³ *Id.*

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ U.S.C. §§ 8101-8193.

⁶ See *Pamela D. Casey*, *supra* note 1.

is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁷ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁹ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁰ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹¹ The claimant must substantiate allegations with probative and reliable evidence.¹²

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment.

Appellant attributed stress to being told that he had to return to his postmaster position. The assignment of work is an administrative function of the employer.¹³ Although the handling of disciplinary actions and the assignment of work duties are generally related to employment, they are administrative functions of the employer and not duties of the employee. Denials by the employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act as they do not involve appellant's ability to perform his regular or specially assigned work duties. Absent error or abuse, these matters would not be compensable.¹⁴ Mr. Snyder, an employing establishment manager, indicated that

⁷ *Lillian Cutler*, *supra* note 4.

⁸ *Jeral R. Gray*, 57 ECAB 611 (2006).

⁹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001).

¹¹ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

¹² *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹³ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁴ *Kim Nguyen*, *supra* note 10.

appellant was being returned to his regular position at the end of a detail and denied anything more was involved. He further noted that appellant was successful as a postmaster in the employing establishment and he routinely sought out and received much more difficult assignments. There is no evidence that to establish error or abuse of the employing establishment regarding this administrative matter of the assignment of his work duties.¹⁵ Not being permitted to work in a particular environment or to hold a particular position is not compensable.¹⁶

Appellant alleged that during his tenure as a postmaster in the employing establishment there was limited time available throughout the workday to perform training and prepare reports that were required. To the extent that alleged he was overburdened as a postmaster at the employing establishment, he did not provide a detailed allegation or supporting evidence to establish such allegation has a factual basis.¹⁷ Mr. Snyder stated that the workload in the employing establishment was evaluated and was the same as other offices. He further stated that the staffing at the employing establishment was higher than normal for that level of office which reduced appellant's daily workload. Mr. Snyder indicated that appellant's supervisory duties of the two part-time clerks and full full-time rural carriers were minimal as they required very little instruction in the performance of their duties. Other than appellant's contention that he was overburdened working as a postmaster at the employing establishment, he provided no evidence to establish his allegation of being overworked. As with all allegations, overwork must be established on a factual basis to be compensable.¹⁸ Thus, appellant has not established a compensable employment factor.

Appellant alleged that he dealt with increasing complaints and issues from customers while a postmaster. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable under the principles of *Cutler*.¹⁹ Appellant expressed his frustration with the customer complaints and issues he had to deal with rather than providing a detailed allegation. Mr. Snyder indicated that there was no history of customer complaints during appellant's tenure as postmaster and he was not aware of any complaints from customers. He further indicated that, during appellant's tenure as postmaster, the employing establishment averaged approximately 12 customers per hour and explained that customer contact was shared with other employees in the office and was not his sole responsibility as the postmaster. Furthermore, appellant did not provide details about this allegation or supporting evidence to establish a factual basis for any particular customer complaints that he handled as part of his duties. The Board finds that he has not established a compensable employment factor.²⁰

¹⁵ *Id.*

¹⁶ *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

¹⁷ *Sherry L. McFall*, 51 ECAB 436 (2000).

¹⁸ *Id.*

¹⁹ *Peter D. Butt, Jr.*, *supra* note 16; *Lillian Cutler*, *supra* note 4.

²⁰ *Sherry L. McFall*, *supra* note 17.

During his tenure as a postmaster, appellant alleged that he was micromanaged by upper management. Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.²¹ Appellant, however, has not provided any specific examples of micromanagement or provided any evidence that upper management acted unreasonably.

Appellant also expressed his dissatisfaction with treatment of union-protected, nonmanagement employees. The Board has held that frustration with the policies and procedures of the employing establishment are administrative matters and are not compensable factors of employment.²² In this case, appellant provided nothing to substantiate employing establishment wrongdoing with respect to its procedures regarding employee rights. Mr. Snyder noted that he was not aware of any complaints involving appellant's management. Appellant therefore failed to show error or abuse with the policies and procedures of the employing establishment. Thus, he failed to establish a compensable employment factor.

Appellant also asserted that his reassignment as a postmaster in 2008 was a reprisal by management against him. The Board has held that actions of the employing establishment which the employee characterizes as harassment or retaliation may constitute factors of employment giving rise to coverage under the Act. Mere perceptions of harassment and retaliation are not compensable under the Act. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment with probative and reliable evidence.²³ Appellant has not established a factual basis for this assertion as he provided no supporting evidence or specific details regarding this allegation. Instead, he indicated at his July 15, 2008 hearing that he had no evidence to support this assertion. Appellant has not established a compensable factor of employment in this regard.

As the record lacks probative evidence to support appellant's claim, the Board finds that he has not established a compensable factor of employment. Appellant therefore did not establish that he sustained a stress-related condition in the performance of duty as alleged.²⁴

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

²¹ *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006).

²² *See William Karl Hansen*, 49 ECAB 140 (1997).

²³ *Sandra Davis*, 50 ECAB 450 (1999).

²⁴ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decisions dated September 24 and March 10, 2008 are affirmed.

Issued: August 14, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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