



2007 Debbie Draga, the station manager, criticized appellant's work procedures and began constantly observing him. She asked if all of his mail was cased, which appellant felt was a "bullying" tactic. Appellant was expected to hold his route to an eight-hour day, but on October 23, 2007 he received additional mail after he had cased his route. He requested to case only the first class mail and leave the third class mail for the following day. Tom Faucette, appellant's supervisor, denied this request. Appellant advised that he would be unable to complete his route within eight hours. Mr. Faucette responded that Ms. Draga should ride with appellant. Ms. Draga objected and stated that appellant should take the whole route. She further stated that if he failed to carry his entire route she would eliminate his 7:00 a.m. report time and require trips on Saturdays. Appellant failed to hold his route to eight hours.

On October 24, 2007 the supervisors again asked appellant to hold his route to eight hours. Mr. Faucette informed appellant that his start time would be changed to 7:30 a.m. every morning as he had observed him standing around waiting for mail. Appellant felt that the change in start time was a consequence of his failure to comply with Ms. Draga's instructions and constituted harassment by management. He requested to see his shop steward and his supervisor Mr. Faucette denied his request. Appellant then requested leave due to excessive stress. He alleged that Ms. Draga loudly commanded him to come to her on the workroom floor and directed him to bring proper medical documentation. Appellant sought medical treatment on October 24, 2007 and telephoned the employing establishment to determine the appropriate leave request procedures and obtain a claim form. On October 25, 2007 he informed Mr. Faucette and Ms. Draga that he was unable to leave a message on the leave line and was directed to contact his supervisor. Ms. Draga instructed appellant to call the appropriate sick leave number, but failed to provide him with this number. Appellant contended that Ms. Draga and Mr. Faucette engaged in manipulation, harassment, bullying and a hostile work environment resulting in stress, embarrassment and humiliation.

Ms. Draga submitted a statement dated May 16, 2007 and noted that appellant owned and operated a lawn care business.

In a letter dated November 6, 2007, the Office requested additional factual and medical evidence. In a statement dated October 24, 2007, Mr. Faucette noted that four times were subject to the needs of the employing establishment. He stated that appellant requested an earlier start time to complete his route within eight hours and had agreed to a trial start time of 7:00 a.m. Mr. Faucette changed appellant's start time to 7:00 a.m. on Monday, Tuesday and Wednesday and 7:30 a.m. on the remainder of his work schedule. Appellant subsequently requested assistance. Mr. Faucette believed that appellant was upset about the time change. After observing appellant, he felt that appellant engaged in time wasting practices. Mr. Faucette changed appellant's start time to 7:30 a.m. to ensure that the mail was fully available and to reduce his morning down time. Appellant then requested sick leave. Mr. Faucette noted that Ms. Draga requested that appellant come to her and he walked away stating that he was going home. Ms. Draga again asked him to come to her and he stated that he would provide documentation for his absence which she agreed was necessary. On October 24, 2007 appellant reported difficulties in reaching the leave line. Mr. Faucette and Ms. Draga tried to ascertain if appellant was calling the correct number and eventually Mr. Faucette agreed to document his absence.

Ms. Draga completed a statement on November 9, 2007. On October 23, 2007 appellant asked for additional time to complete his route. Ms. Draga informed him that he was not maintaining the demonstrated and agreed upon time for his route. Ms. Draga stated that appellant attempted to engage in a debate and that she directed him to address requests to his supervisor. Following his delivery, appellant requested a change in his start time which, if granted would allow him to complete his route within eight hours. Ms. Draga denied this request as she observed appellant on October 24, 2007 engaging in time wasting practices. She stated that she instructed appellant to case his mail before doing anything else on his route. Ms. Draga noted that, after Mr. Faucette informed appellant that his start time had changed, he requested a leave form and indicated that he required sick leave. She asked if appellant had provided documentation for his sick leave usage and Mr. Faucette indicated that he had not. Ms. Draga then approached appellant, who walked away from her. She requested that appellant return to his work area three times before he complied. Ms. Draga instructed him to provide acceptable medical documentation to substantiate that he was unable to complete his assigned duties.

In a November 5, 2007 report, Dr. Gary K. Arthur, a Board-certified psychiatrist, diagnosed major depressive illness recurrent and work stress.

In a statement dated October 24, 2007, appellant reiterated that he was singled out, threatened for performance, embarrassed on the workroom floor, harassed, manipulated and discouraged by management and worked in a hostile work environment. He stated that he was unable to complete his route within his eight-hour work restriction. Appellant provided a November 10, 2007 witness statement from Dena M. Ponticello, who affirmed that Ms. Draga repeatedly instructed appellant to “come here” on October 24, 2007 and had requested documentation for medical review.

By decision dated January 9, 2008, the Office denied appellant’s claim for an emotional condition finding that he failed to establish a compensation factor of employment.

### **LEGAL PRECEDENT**

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.<sup>1</sup> Workers’ compensation law does not apply to each and every injury or illness that is somehow related an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of worker’s compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.<sup>2</sup> On the other hand, the disability is not covered

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<sup>1</sup> 20 C.F.R. § 10.5(q).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>3</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 the coverage of the Act.<sup>4</sup> While an administrative or personnel matter will be considered an employment factor where the evidence discloses error abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.<sup>5</sup> Although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act. However, to the extent that 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.<sup>6</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principle recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<sup>7</sup>

Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. Although the Board has recognized the compensability of verbal abuse in certain circumstances this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>8</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the Acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>9</sup>

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<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *James E. Norris*, 52 ECAB 93, 100 (2000).

<sup>5</sup> *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

<sup>6</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000).

<sup>7</sup> *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>8</sup> *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>9</sup> *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

## ANALYSIS

Appellant alleged that he sustained an emotional condition due to the actions of his supervisors on October 23, 2007. However, in his narrative statement, he also attributed his emotional condition to the events of October 23 through 25, 2007. As appellant's emotional condition developed over a period of more than one work shift, his claim is appropriately considered one for occupational disease rather than a traumatic injury.

Appellant attributed his emotional condition to the denial of his request for aid to complete his route on October 23, 2007, the denial to deliver third class mail on the following day, to criticisms of Ms. Draga regarding his work practices and her constant observation on October 23, 2004. He also attributed his emotional condition to the change of his start time on October 24, 2004 to 7:30 a.m. These allegations pertain to appellant's dislike of matters within the discretion of his supervisors. Without evidence substantiating error or abuse, these allegations do not constitute compensable factors of employment. Appellant has not submitted any documentation, witness statements or other evidence substantiating that the actions by his supervisors were in error or abusive in any administrative action.

Appellant attributed his emotional condition to an alleged confrontation with Ms. Draga on October 24, 2007 regarding his need for medical documentation to support his leave request. He alleged that Ms. Draga yelled at him from across the workroom floor directing him to come to her. Ms. Draga denied raising her voice and noted that she requested that appellant return to his workstation. Ms. Ponticello confirmed that Ms. Draga requested that appellant "come here" and asked for medical documentation. Appellant has not submitted any evidence establishing that Ms. Draga's requests were abusive in nature. The mere fact that she repeatedly requested his presence does not rise to the level of verbal abuse and is not a compensable factor of employment.

Appellant also attributed his emotional condition to the actions of his supervisors on October 25, 2007 regarding his leave request. Matters concerning leave are considered personnel matters and noncompensable unless error or abuse is established. Appellant alleged that Ms. Draga was abusive and argumentative by repeatedly suggesting that he call the leave line number without providing him with the appropriate number. Mr. Faucette disputed this account of events and noted that after providing appellant with the correct number and ascertaining that he was unable to appropriately request leave, he agreed to document appellant's absence. Appellant has submitted no evidence to establish error or abuse on the part of his supervisors regarding the events of October 25, 2007.

Appellant has further alleged that the foregoing described events and incidents constituted harassment and discrimination by his supervisors. He has not submitted any evidence, documentation or witness statements substantiating that these events were in fact harassment or discrimination. As noted above, the mere perception of harassment or discrimination is not sufficient to constitute a compensation factor of employment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>10</sup>

**CONCLUSION**

The Board finds that appellant has failed to substantiate a compensation factor of employment and that the Office therefore properly denied his claim for an emotional condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2009  
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

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<sup>10</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).