

Appellant alleged on the claim form that Ms. Riley used obscenities, called him a “piece of shit” and threatened to fire him. He stated that he was treated with disrespect every day.

The supervisor submitted a March 17, 2008 statement that she did not ever call appellant a “piece of shit” or threaten to fire him. She stated that on December 12, 2007 she notified appellant an investigative interview was scheduled for December 17, 2007 regarding why appellant failed to implement standardized work methods for carriers. The supervisor noted appellant had been struggling to meet deadlines and due dates, and at an October 16, 2007 meeting help was offered, but appellant stated he did not need assistance.

The record contains a March 10, 2008 letter from an employing establishment Equal Employment Opportunity (EEO) specialist indicating appellant had filed a discrimination complaint with the EEO based on race, sex and age. The specialist indicated that during an inquiry into appellant’s allegations, Ms. Riley stated it was appellant who became angry and cursed during meetings, blaming his managers for not following instructions. According to the specialist, Ms. Riley indicated the budget issue was that appellant would exceed the city carrier budget, while appellant asserted there were other budget lines that balanced the city carrier overruns.

In a statement received by the Office on April 15, 2008, appellant stated that his illness was caused by “consistent intimidating, hostile, yelling, cursing, demeaning and threatening behavior” by Ms. Riley. He stated that the event that led up to his panic attack was on December 10, 2007, when the supervisor yelled obscenities at him regarding the condition of the workplace. Appellant alleged there were constant threats to demote or fire him. On December 12, 2007 he stated that the supervisor yelled about his managers not being timely with a report, called him an idiot and again used obscenities. Appellant alleged that the supervisor “was always on me about not making my budget. My fiscal year [2008] budget was shorted by 90 hours a day from what was earned. This was due to the Sacramento District budget office errors.” According to appellant he had 10 stations within his responsibility, with deadlines that must be met.

In a May 20, 2008 letter, the supervisor responded to appellant’s allegations. She stated that appellant had been advised that he was overspending his budget by 40 hours a week in unauthorized supervision and on December 10, 2007 he was told to follow prior instructions and remove the unauthorized supervisor. The supervisor denied calling appellant an idiot, using vulgar language or threatening to fire him. She stated that it was acknowledged that his office was shorted a small amount of clerk hours, and a budget adjustment was made, but he had been overrunning the city carrier budget.

A witness statement dated May 27, 2008 from a coworker, Ricardo Caro, reported that he disagreed with appellant regarding an October 30, 2007 meeting. He stated that he did not recall Ms. Riley yelling or using profanity, the meeting was cordial and Ms. Riley encouraged them to continue to do better. In a May 21, 2008 letter, a manager of customer services stated that the fiscal 2008 budget for the Stockton Post Office was tight, but manageable. A May 23, 2008 letter from a Richard Matsuhira indicated there initially was a shortage in the weekly budget but after four or five weeks it was corrected.

With respect to medical evidence, appellant submitted reports from Dr. Davis Oas, a psychologist. In a report dated February 19, 2008, Dr. Oas reported that appellant had a panic attack on December 12, 2007 after a “conflicted interaction” with a supervisor. He reported that appellant felt he could not return to his job under Ms. Riley. In a brief April 3, 2008 report, Dr. Oas stated that he had reviewed appellant’s responses and he concurred with appellant’s statements.

In a decision dated September 12, 2008, the Office denied the claim for compensation. It found appellant had not established a compensable work factor. Appellant requested an oral hearing before an Office hearing representative, which was held on March 11, 2009. At the hearing, he stated that his budget was initially under funded and Ms. Riley refused to acknowledge this fact. Appellant stated that there was pressure to make the budget, and he could not. He also stated that Ms. Riley did not tell him that additional hours would be funded prior to December 2007.

In a report dated July 8, 2008 and received on September 12, 2008, Dr. Gary Cavanaugh, a psychiatrist, provided a history and results on examination. He diagnosed panic disorder and personality disorder. Dr. Cavanaugh stated that the panic disorder “grew out of conflict with his direct supervisor” and found appellant was not fit for duty because of his intermittent panic attacks.

In a report dated December 5, 2008, Dr. Oas reviewed appellant’s history. He noted appellant’s allegations regarding his interaction with Ms. Riley. Dr. Oas stated, “My opinion is that the critical predisposing factor that led up to his panic disorder, medical leave and inability to return to Stockton, was his employment situation with its impossible job duties and budget work hour shortfalls. The budget shortfall and the crisis it created for [appellant] and his employees, by itself, produced a stressful environment.”

By decision dated May 22, 2009, the hearing representative affirmed the denial of the claim for compensation. The hearing representative found that appellant did work in an under-funded office, and this was a compensable work factor. No other compensable work factors were established and the hearing representative found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

Appellant 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 factors of his federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² It also includes the

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

submission of medical evidence containing a rationalized opinion on causal relationship between the identified compensable work factors and a diagnosed emotional condition.³

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where 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.⁴

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁵ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁶

ANALYSIS

As noted by the hearing representative, appellant's primary allegation when he filed his claim for compensation was that he had an emotional reaction to the actions of a supervisor, Ms. Riley. Appellant alleged that he was subject to verbal abuse from the supervisor, and the record indicates he filed a discrimination claim based on alleged treatment by the supervisor.

In this regard the Board notes that while verbal abuse can be a compensable factor, the evidence of record must be sufficient to establish verbal abuse.⁷ While a claimant may characterize an employee's statements as verbal abuse, not every statement uttered in the workplace will give rise to coverage.⁸ In the present case, appellant alleged that the supervisor yelled and used profanity, threatened to fire him and generally tried to intimidate him. The evidence of record does not contain any supporting evidence of verbal abuse. The supervisor denied making the alleged comments, and the only witness statements did not corroborate appellant's allegations. An EEO complaint was apparently filed, but no supporting evidence was

³ *George H. Clark*, 56 ECAB 162, 165 (2004).

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

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁷ *See Joe M. Hagewood*, 56 ECAB 479 (2005).

⁸ *Marguerite J. Toland*, 52 ECAB 294 (2001). The Board also notes that a raised voice does not itself warrant a finding of a verbal abuse. *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

submitted. Based on the evidence of record, the Board finds appellant did not establish a compensable work factor regarding verbal abuse, harassment or discrimination.

At the March 11, 2009 hearing, appellant appeared to shift his focus to an allegation that his emotional condition arose from a reaction to a budgetary shortfall. In this regard, the Board notes that the evidence does establish that appellant was a postmaster who was responsible for supervising operations that included the budget. The record also indicated that, at least for a period of time in late 2007, the employing establishment acknowledged that appellant's budget had been shorted a small amount of clerk hours. To the extent that appellant is alleging because of this shortfall there was stress regarding the performance of his assigned duties, which included the budgetary process, this would be a compensable factor of employment. As noted above a reaction to the performance of regular or specially assigned duties does fall within coverage under the Act. Before addressing the medical evidence, the Board notes that to the extent that appellant is making a broader allegation of overwork, the evidence does not support overwork as a compensable work factor. A claimant must provide a detailed allegation and supporting evidence to establish overwork.⁹ Appellant did not provide a detailed description of his work duties and other evidence to establish a claim based on overwork.

As to the medical evidence, the Board finds the record does not contain a rationalized medical opinion on causal relationship between a diagnosed emotional condition and the accepted compensable work factor. Dr. Cavanaugh briefly refers to a conflict with a supervisor, which is not a compensable work factor. Dr. Oas also discusses the conflicts with a supervisor. In his December 5, 2008 report, he refers to "impossible job duties" and the "budget shortfall" without a detailed explanation. It is not factually established that appellant's job duties were "impossible" based on the evidence of record. As to a budget shortfall, Dr. Oas does not discuss appellant's specific job duties and explain how the performance of budgetary duties contributed to a diagnosed condition.

On appeal, appellant states that Dr. Oas has a responsibility to treat his patients, not to relate their problems to compensable work factors. Under the Act it is appellant's responsibility to establish his claim for compensation. This responsibility requires both the establishment of compensable work factors and medical evidence that contains a rationalized medical opinion on causal relationship between a diagnosed condition and the compensable work factors. For the reasons noted above, appellant did not meet his burden of proof in this case.

CONCLUSION

The Board finds appellant did not establish an emotional condition causally related to compensable work factors.

⁹ See *Sherry L. McFall*, 51 ECAB 436 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 22, 2009 is affirmed. The September 12, 2008 decision is modified to reflect a compensable work factor is established and is affirmed as modified.

Issued: May 19, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board