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

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| **M.G., Appellant** | ) | |
| **and** | ) | **Docket No. 10-71** |
| | ) | **Issued: October 18, 2010** |
| **U.S. POSTAL SERVICE, POST OFFICE, Augusta, GA, Employer** | ) | |

*Appearances:*
*Michael Brown, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On October 9, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 17, 2009, which denied 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 case.

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish that he developed an emotional condition in the performance of duty.

### ***FACTUAL HISTORY***

On September 1, 2006 appellant, then a 50-year-old city letter carrier, filed a claim for stress and anxiety he experienced on August 4, 2006 due to daily work conditions at the employing establishment. He stopped work on August 4, 2006 and did not return. Appellant alleged that he was under stress due to increased working demands which required him to do more work each day within the same amount of time. He alleged that he was labeled a "terrorist

threat" at work and improperly disciplined without pay and could not afford the psychiatric evaluation required by the employing establishment.

In a July 28, 2006 statement, Jack Watson, the plant manager, noted that on July 27, 2006 he witnessed appellant yelling at Doug Shirer, a customer service manager. Appellant was argumentative and in Mr. Shirer's face. Mr. Watson described appellant's behavior as threatening and hostile. In an August 7, 2006 notice of emergency placement in off-duty status, James F. Lloyd, the supervisor of customer service, suspended appellant effective August 4, 2006. Mr. Lloyd issued a 14-day suspension. He stated that during a meeting, appellant indicated that he could not be responsible for any further confrontations or work under current conditions. Based on appellant's demeanor and possible endangerment to himself or others, he was placed on emergency suspension until he could provide medical documentation substantiating his ability to perform his job without endangering himself or others.

On August 3, 2006 the Office asked appellant and the employing establishment to provide additional evidence.

In a July 28, 2006 statement, Mr. Shirer noted that, on that date, appellant told him that he drank juice and ate fruit while delivering mail and almost always had to take a "dump" when he returned to the office. In an aggressive tone, appellant asked who would be responsible should he fall in the restroom or the building after clocking out but prior to leaving the building. Mr. Shirer advised appellant that carriers were sometimes permitted up to five minutes for washing up but was not aware of a policy where employees could not use the facilities after clocking out. He stated that appellant became confrontational and argumentative and, when Mr. Shirer attempted to walk away, appellant followed him becoming louder and demanding a written response to his questions. When Mr. Shirer turned into the plant manager's office, appellant yelled "You white people (men) think you run the world." Mr. Shirer advised that appellant's conduct was belligerent, derogatory, confrontational, racially motivated and subject to the zero tolerance policy. Appellant had demonstrated previous antagonistic behavior and disdain for authority, disrupted service talks and frequently confronted floor supervisors. In an October 4, 2006 statement, he stated that many employees performed their daily jobs under the same conditions as appellant and all employees were tasked with accomplishing more within a given time period. Mr. Shirer noted that appellant's situation was not unique and that the amount of work requested of carriers was less than that requested of other employees. He asserted that at no time either verbally or in writing was appellant labeled a terrorist threat. Mr. Shirer indicated that the agency was compelled to remove appellant from the workplace until he could provide evidence that he was not a threat. During the discipline process appellant stated that he had a psychological profile that would prohibit him from controlling his actions. Mr. Shirer placed appellant in a nonduty status, with pay. Mr. Shirer stated that the agency had to ensure the safety of all employees. He noted that appellant was generally able to perform his required duties; however, he was disruptive, confrontational and bullying.

The employer submitted statements dated August 4 and October 30, 2006 from Mr. Lloyd who noted meeting with appellant and his union representative to issue the 14-day suspension. Mr. Lloyd noted that appellant refused to sign the document and stated that, given his psychological profile, he would not be responsible for further confrontations and could no longer work under the conditions that existed and requested a transfer.

In an undated statement appellant indicated that on August 4, 2006 he met with Mr. Lloyd and his union steward and was issued a 14-day suspension for an incident that occurred on July 27, 2006.[1] He asserted that the discipline should have been progressive, starting with a verbal discussion, letter of warning and 7-day suspension before the 14-day suspension. Appellant requested a transfer, indicating that it was stressful working for Mr. Shirer because of the July 27, 2006 incident. Appellant was called to Mr. Lloyd's office and placed in emergency off-duty status because of an alleged threat he made. Appellant asserted that he did not make a "terrorist threat" and that he was not a threat to himself or others. He stated that on another occasion he was improperly singled out and called to the postmaster's office for not delivering mail to an academy when the doors were locked and there was no outside receptacle. Appellant indicated that he notified Mr. Lloyd who instructed him to put the mail on hold. He believed that he was blamed for not delivering mail when he was only following instructions. Appellant alleged that letter carriers were not allotted extra breaks during the summer and were disciplined if mail was not scanned at a certain time. He indicated that supervisors programmed mail routes into a computer and an eight-hour route was now considered to be a six and a half-hour route and management was adding an additional one and a half-hours of mail delivery to the route making carriers do more work in the same amount of time.

In a February 24, 2006 report Dr. John Adkins, a cardiologist, diagnosed shortness of breath, wheezing, nonsmokers cough and obstructive lung disease. In an October 5, 2006 report Dr. R. Adair Blackwood, a Board-certified psychiatrist, treated appellant on September 26, 2006 and diagnosed severe major depression and intermittent explosive disorder. Appellant reported being harassed at work by managers. Dr. Blackwood noted appellant's work environment contributed to his current psychiatric problems and he was not able to work.

In a September 15, 2006 statement, Althea Y. Chadon, a union steward, noted being present on August 4, 2006 when Mr. Lloyd issued appellant's 14-day suspension. Appellant requested a transfer and Mr. Lloyd stated, "I'll see what I can do." Ms. Chadon asserted that the 14-day suspension was punitive and management did not substantiate that appellant was disruptive and confrontational. In an October 16, 2006 statement, Darryl E. Marshall, a carrier who served as safety captain, indicated carriers complained about not having additional breaks during the extreme heat and that they were breathing hazardous dust when ceiling tiles were removed in the workplace. Statements from Anthony Brody and Donna Amacker, coworkers, noted complaints to management about dust in 2006 and the failure of management to provide exceptions for carriers who delivered mail in the extreme heat. In an October 18, 2006 statement, Jesse A. Attucks, a retired union steward, noted that appellant reported problems delivering mail to Richmond Academy and was instructed to hold the mail by Mr. Lloyd. He noted that appellant was later faulted because of a customer complaint but was later vindicated.

On October 27, 2006 James A. Sizemore, postmaster, noted receiving a complaint from Richmond Academy that stemmed from appellant not being able to enter a locked rear door to deliver mail. He met with appellant to learn about the situation and that the meeting was not disciplinary in nature. Mr. Sizemore instructed appellant to treat customers appropriately and, if

[1] This appears to be the incident that Mr. Shirer indicated occurred on July 28, 2006.

a situation arose where appellant felt that the services requested were above what he could provide or other problems arose with access to mail receptacles, he should inform his immediate supervisor.

In an October 28, 2006 statement, Mr. Shirer noted that the employing establishment had a zero tolerance policy for unacceptable behavior and appellant's behavior violated behavioral guidelines and policy. He indicated that appellant's contention that it would be difficult to return to work because of the incident of July 27, 2006 was false. Mr. Shirer noted that appellant was not labeled a "terrorist threat" and management's actions were predicated upon his statements and actions. He advised that the current system of managing employee workloads was a product of normal operating evolution. Mr. Shirer noted that letter carriers perform their duties daily under the direction and procedures established for delivery units. With regard to appellant's concerns over working in the hot temperatures, he noted that an hour variance is allowed between scan points and carriers were expected to scan nine points throughout their route which did not require extraordinary effort. He noted that the agency encouraged all employees to perform their duties safely and provided unlimited ice for employees.

On October 30, 2006 Mr. Lloyd interviewed appellant regarding the July 27, 2006 incident and appellant admitted speaking loudly to Mr. Shirer. He noted that during the interview appellant stated, "You white boys think you rule the world." Mr. Lloyd indicated that the 14-day suspension was appropriate given the nature of appellant's offense and he believed a lesser disciplinary action would not have been corrective and termination would have been too severe. He further indicated that he never guaranteed that appellant would be transferred and that other carriers who moved to other zones made successful bids in those areas. With regard to the incident at Richmond Academy, Mr. Lloyd stated that employees were tasked with doing all they could to provide requested services for customers and were not permitted to be firm with customers as noted by appellant. He addressed appellant's complaints about dust and indicated that investigations revealed no environmental hazard existed. Mr. Lloyd further noted that annual safety talks were given throughout the summer warning carriers of dehydration and heat related illness and advised that carriers were provided with ice and Gatorade.

In a decision dated March 23, 2007, the Office denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty.

Appellant requested a review of the written record. He submitted reports from Dr. Blackwood dated September 26, 2006 to July 2, 2007, who noted that appellant reported problems with anger at work and difficulty getting along with his boss. Dr. Blackwood diagnosed major depression, severe, post-traumatic stress disorder and intermittent explosive disorder. He noted that appellant could not work due to symptoms and could not return to his previous job. On July 5, 2007 Dr. Blackwood noted that appellant experienced harassment at work over many years and extreme emotions were triggered by that environment. He noted that appellant's disability was directly related to his work environment. In an August 23, 2007 questionnaire, Dr. Blackwood diagnosed recurrent major depression and post-traumatic stress disorder. He noted that appellant's condition was due to mistreatment on the job and opined that any job at the employing establishment would be dangerous for him and others. An April 16, 2007 report from Dr. John C. McCormack, a clinical psychologist, noted seeing appellant on January 30, 2007 and diagnosed depression.

By decision dated October 30, 2007, the Office hearing representative affirmed the prior decision. Appellant appealed to the Board. In an August 19, 2008 order, the Board remanded the case to the Office to combine his claims and, after such other development as deemed necessary, to issue an appropriate decision on appellant's claim.[2]

In a September 12, 2008 decision, the Office denied appellant's claim. It found that he established a compensable factor noting that during appellant's 27 years with the employing establishment he experienced a demanding workload and technological updates along with stringent performance standards. However, the Office noted the medical evidence did not to establish that appellant's claimed condition was related to the accepted work factor. Other incidents alleged by him were found not to be factors of employment.

Appellant requested an oral hearing that was held on February 11, 2009. He submitted a grievance resolution dated November 27, 2006, which noted that the emergency suspension was rescinded and there was no just cause for the emergency placement in off-duty status. The resolution further noted that the 14-day suspension was excessive as it related to progressive discipline and was modified to a letter of warning. In a March 15, 2007 grievance resolution, it was determined that the agency erred by not paying appellant for the period August 4 to September 25, 2006. Appellant submitted reports from Dr. Blackwood dated July 2 and 5, 2007, previously of record.

In a decision dated April 17, 2009, the Office hearing representative affirmed the September 12, 2008 decision as modified. The hearing representative noted that appellant established that the employing establishment erred in the issuance of a 14-day suspension on August 3, 2006 as this action was found to be excessive as it relates to progressive discipline and that the employing establishment erred in not paying appellant for the period August 4 to September 25, 2006. However, the Office hearing representative found that his allegation of harassment was not established noting that the grievance resolution made no finding supporting agency harassment. Additionally, the hearing representative found that the medical evidence was insufficient to establish that the claimed medical condition was related to the accepted factors of employment.

## ***LEGAL PRECEDENT***

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

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some

[2] Docket No. 08-723 (issued August 19, 2008). The other claim, No. xxxxxx108, involves a respiratory condition.

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

connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4] On the other hand the disability is not covered 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.[5]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[6] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[7]

## ***ANALYSIS***

Appellant alleged an emotional condition due to his regular and specially assigned duties. He noted stress due to having to perform an increasing amount of work each day within the same amount of time. Mr. Shirer acknowledged that all employees were tasked with accomplishing more within a given time period and that the employer was adapting to a changing business climate and technological advances. The Office found that appellant's increased workload and encountering technological updates in performing his duties was an employment factor. The Board finds that the evidence supports this finding and that he has established a compensable work factor under *Cutler*.[8]

Appellant also made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,[9] the Board held that an employee's emotional reaction to administrative

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Lillian Cutler,* 28 ECAB 126 (1976).

[6] *See Norma L. Blank,* 43 ECAB 384, 389-90 (1992).

[7] *Id.*

[8] *See supra* note 5. Appellant alleged a respiratory condition due to a dusty environment from ceiling construction in 2006. The respiratory condition was developed and denied in claim number xxxxx108, which was combined with the present claim before the Board. In claim number xxxxxx108, the Office, in a June 6, 2006 decision, found that appellant had not established that the factual component of his claim. To the extent that appellant asserts that a dusty work environment contributed to his claimed emotional condition, the Board finds that he has not shown that a dusty environment existed.

[9] 41 ECAB 387 (1990), *see reaff'd on recon.,* 42 ECAB 566 (1991).

actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[10]

Certain of appellant's allegations relate to disciplinary matters regarding the August 4, 2006 14-day suspension. Disciplinary actions are administrative functions of the employer and not duties of the employee and, unless the evidence discloses error or abuse on the part of the employing establishment, are not compensable employment factors.[11] Appellant submitted grievance resolution documents finding that his emergency suspension was rescinded and that it had been issued with no sufficient cause. It was also found that the employer erred by not paying him for the period August 4 to September 25, 2006. The Board finds that the evidence establishes error on the part of management in issuing the 14-day suspension and not paying appellant for the period August 4 to September 25, 2006.

Appellant alleged that he requested to be moved to another work zone after the July 27, 2006 incident with Mr. Shirer because he feared it would be stressful to continue working for him; however, management failed to reassign him. The Board has held that denials by an 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, but rather constitute appellant's desire to work in a different position.[12] The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. In an October 30, 2006 statement, Mr. Lloyd advised that he never guaranteed that appellant would be moved to another area and that other carriers which were moved to other zones based on successful bids. Additionally, appellant's representative, Ms. Chadon noted in a September 15, 2006 statement that when appellant requested to be transferred to another zone Mr. Lloyd did not guarantee a transfer, rather, he stated, "I'll see what I can do." Appellant has not established a compensable factor of employment in this regard. He has presented no corroborating evidence to support that the employing establishment acted unreasonably.

Appellant alleged that Mr. Sizemore improperly accused him of failing to deliver mail to Richmond Academy when he was instructed by his supervisor to hold the mail. He further indicated that his supervisors failed to allot extra time for mail delivery and provide breaks during the hot summer months and advised the carriers that they faced discipline if they did not

[10] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[11] *C.T.*, 60 ECAB ___ (Docket No. 08-2160, issued May 7, 2009).

[12] *See also D.L.*, 58 ECAB 217 (2006); *Donald W. Bottles*, 40 ECAB 349, 353 (1988); (the assignment of work by a supervisor, the granting or denial of a request for a transfer and the assignment to a different position are administrative functions that are not compensable absent error or abuse).

scan checkpoints by a certain time. The Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[13] The assignment of work by a supervisor is an administrative function that is not compensable absent error or abuse.[14]

There is insufficient evidence to establish that Mr. Sizemore or Mr. Lloyd acted unreasonably in the Richmond Academy matter or singled appellant out. The record indicates that the employer received a complaint about appellant's actions. Mr. Sizemore noted having a meeting to learn about the situation and advised that it was not disciplinary in nature. Mr. Lloyd noted questioning appellant regarding mail delivery to Richmond Academy and indicated that the employing establishment was tasked with providing the requested service to customers. The Board finds that the employer did not act unreasonably in this matter. Instead, the evidence shows that, when a customer voiced concern about the delivery in question, the employing establishment sought to determine what happened and then provided proper instruction to appellant regarding customer interaction.

Regarding breaks, appellant submitted statements from Mr. Marshall and Mr. Brody, both carriers, who noted that additional breaks were needed for carriers during the summer months due to the extreme heat. In an October 28, 2006 statement, Mr. Shirer noted that an hour variance was allowed between scan points and carriers were expected to scan nine points throughout their route. He noted that the agency encouraged all employees to perform their duties in a safe manner and provided ice for their use during the summer months. In an October 30, 2006 statement, Mr. Lloyd indicated that safety talks were given annually warning carriers of the dangers of dehydration and heat-related illnesses and they were provided with ice and Gatorade. The Board finds that the employing establishment did not error in this regard and that appellant has not established that these matters rise to the level of a compensable employment factor.

Appellant generally alleged that he was harassed and discriminated against. He noted incidents including being labeled a "terrorist threat" at work. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[15] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[16] The factual evidence fails to support appellant's claim for harassment. The

[13] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[14] *D.L.*, 58 ECAB 217 (2006).

[15] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[16] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991); (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

record does not support appellant's allegation that he was labeled a "terrorist threat" at work. Appellant cited no specific instances of harassment occurring at a particular time and place, rather he just made general allegations. The employing establishment denied this. In an October 4, 2006 statement, Mr. Shirer noted that, at no time, either verbally or in writing, was appellant labeled a terrorist threat. The evidence is insufficient to show that appellant was singled out or treated disparately with regard to his claim of harassment.

As noted, appellant established compensable factors of employment with regard to an increased workload, encountering technological updates, the improper issuance of a 14-day suspension and in not being paid from August 4 to September 25, 2006. However, his burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. As noted, appellant must also submit rationalized medical evidence establishing that his claimed conditions are causally related to the accepted compensable employment factor.[17]

Appellant submitted reports from Dr. Blackwood dated September 26 and October 5, 2006 who noted that appellant reported being harassed at work and singled out by managers. Dr. Blackwood diagnosed depressive disorder, recurrent, severe without psychotic features, intermittent explosive. He noted that appellant's work environment had undoubtedly contributed to his current psychiatric problems. In reports dated October 24, 2006 to February 13, 2007, Dr. Blackwood diagnosed major depression, severe, post-traumatic stress disorder and intermittent explosive disorder. He noted that appellant experienced harassment at work over many years and noted appellant's disability was directly related to his work environment. In an August 23, 2007 questionnaire, Dr. Blackwood noted that appellant's post-traumatic stress disorder was due to mistreatment on the job and opined that any job at the employing establishment would be dangerous for him and others.

Dr. Blackwood did not provide a rationalized medical opinion addressing how any of the accepted compensable employment factors caused or aggravated appellant's emotional condition.[18] Although he generally noted appellant's work environment as a contributing factor to his stress, he did not specifically reference the accepted employment factors or explain how such factors caused or contributed to appellant's claimed condition. Instead, Dr. Blackwood generally indicated that harassment or poor treatment at work caused psychiatric problems but he did not explain how any particular accepted employment factor caused or aggravated a diagnosed emotional condition.

Also submitted was an April 16, 2007 report from Dr. McCormack, who saw appellant on January 30, 2007 and diagnosed Axis 1 depression and Axis 2 deferred. However, this report did not mention any of the established employment factors as contributing factors to appellant's condition and did not support causal relationship. Likewise, appellant submitted medical evidence from February 2006 regarding his treatment for respiratory problems. However, this

[17] *See supra* note 3*; William P. George*, 43 ECAB 1159, 1167 (1992).

[18] *Id.; see also Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001); (medical reports not containing rationale on causal relationship are entitled to little probative value).

evidence does not reference any of the established employment factors as causing or aggravating appellant's emotional condition.

The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed conditions are causally related to the accepted compensable employment factors.

## ***CONCLUSION***

The Board finds that appellant has not established that he sustained an emotional condition causally related to factors of his federal employment.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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