



aware of his condition on December 2, 2002 and realized it was related to his employment on June 16, 2003. Appellant stopped work on June 16, 2003. On August 12, 2003 OWCP requested a detailed description of the work factors to which he attributed his claimed illness.

Appellant alleged that his supervisors, Postmaster Benny Daigle and officer-in-charge Eloise Colbert, failed to provide guidance and upstaged him in front of subordinates to such an extent that his decisions would not be upheld by his superiors. He stated that Mr. Daigle was absent 10 of 21 weeks from about November 2002 to March 2003 and he was the only manager covering the office from 5:00 a.m. to 5:00 p.m. and assumed additional duties. When Mr. Daigle was available during that period, appellant was required to do split shifts so Mr. Daigle could attend to his ailing father. Appellant alleged that, from December 2002 through March 2003, he was shorthanded two clerks every week and called other employing establishment facilities daily for assistance. He alleged that his request for vacation was denied in September 2002 because Mr. Daigle was out. Appellant finally was granted vacation the week of October 5, 2003. On December 2, 2002 he was verbally reprimanded by Mr. Daigle for not scheduling an extra clerk for the Christmas rush. From November 2002 to March 2003 appellant had continuous conflicts with Mr. Daigle about an employee's rights when requesting sick leave. He asserted that from February 3 to 7, 2003, Mr. Daigle was on sick leave. Appellant was also sick and the postmaster requested that he work on his day off. He alleged that his annual leave for Memorial Day was granted but then taken away by Ms. Colbert, who also charged him with two days of leave without pay rather than sick leave for July 24 and 25, 2003, although his medical documentation was forthcoming. On February 6, 2003 Dwayne Jackson a carrier, spoke to appellant in his cubicle and became agitated and belligerent, using profanity and making verbal and physical threats against appellant. Appellant requested that Mr. Jackson leave the workplace and reported the incident to the Threat Assessment Team. Despite the zero tolerance violence policy, Mr. Jackson was permitted to return to the employing establishment and resume his duties in April 2003. On February 10, 2003 Sandra Babin, a clerk, requested light duty but Mr. Daigle advised that light-duty assignments were not offered and instructed appellant to send her home. As a result Ms. Babin filed a grievance against appellant for not following the union contract. Appellant asserted that he was improperly issued a letter of warning on March 7, 2003 and a proposed letter of warning in lieu of a seven-day suspension on June 18, 2003.

Appellant submitted treatment notes from Dr. Rao R. Narra, a Board-certified internist, dated January 3 to July 22, 2003. He was treated for depression and generalized anxiety and advised to be out of work until June 26, 2003. Appellant submitted copies of the letter of warning and proposed letter of warning in lieu of a seven-day suspension for failure to properly perform his assigned duties.

In an undated statement, Mr. Daigle noted that appellant performed his job well until April 2002 when he appeared to have alcohol on his breath. He referred appellant to the Employee Assistance Program. Mr. Daigle noted that appellant failed to handle his position with authority and accountability. He noted that the workplace violence incident occurred due to appellant's inability to supervise his employees. Mr. Daigle advised that appellant had a confrontation with the same carrier three times and each time the amount of intimidation escalated. He noted that discipline was issued to the carrier but, under a settlement, he was returned to the workplace. Mr. Daigle disputed appellant's assertion that from November 2002 to April 2003 he was out of the office 10 of 18 weeks or that appellant was forced to work unpaid overtime. He was always available to appellant

through telephone or pager. Mr. Daigle noted that appellant was aware that his position description included filling in for the postmaster with no additional compensation. He agreed that the office experienced a clerk shortage. Mr. Daigle advised that there had been a hiring freeze for clerks and everyone worked shorthanded. He stated that “additional duties working over 10 hours a day, in all fairness there was some days ... we all do from time to time.” Mr. Daigle noted that appellant worked some split shifts for him when his father was ill. Regarding the clerk shortage at Christmas, he stated that it was appellant’s responsibility to meet the needs of his customers during that time and appellant was aware of the high business volume during the holiday season. Regarding the grievance filed by Ms. Babin regarding light duty, Mr. Daigle advised that her request was based on a nonwork injury and the policy was not to offer light duty for such injuries. Mr. Daigle noted that the letter of warning issued was proper as appellant failed to perform his duties.

In a September 21, 2003 statement, Ms. Colbert noted that she had an immediate concern from a perceived smell of alcohol on appellant’s breath when she spoke with him. She indicated that she did not deny his request for annual leave and granted three days of annual leave from May 22 to 24, 2003. Ms. Colbert stated that appellant received a predisciplinary discussion during the first week of June 2003 prior to the letter of warning issued on June 18, 2003 because he did not satisfactorily perform his duties. Regarding appellant’s allegation that he was charged leave without pay instead of sick leave, she advised that he did not timely provide medical documentation supporting his absences and an adjustment was made with the documentation provided.

In a decision dated September 29, 2003, OWCP denied appellant’s claim finding that the claimed emotional condition did not occur in the performance of duty.

On April 28, 2004 appellant requested reconsideration. He reiterated his allegations and noted a pattern of escalating violent behavior by Mr. Jackson including the February 6, 2003 threat. In a June 25, 2003 note, Dr. Narra stated that appellant was unable to work through July 9, 2003. Also submitted were reports from Dr. S. Rao Chalasani, an internist, from July 2, 2003 to March 24, 2004. He treated appellant for significant depression and anxiety and noted that he could not work until April 7, 2004. In a September 15 and December 17, 2003 reports, Dr. Chalasani noted appellant’s problems with a new female postmaster and a carrier who threatened him in front of others. Dr. Chalasani noted that appellant feared returning to work with the carrier who threatened him.

On July 30, 2004 OWCP denied modification of the September 29, 2003 decision.

On June 24, 2005 appellant requested reconsideration. He submitted a statement from Winifred Hernandez, a rural carrier, who witnessed a violent confrontation between Mr. Jackson and appellant on February 6, 2003. She stated that Mr. Jackson spoke loudly and “threatened to strike a woman and knock her through the floor.” Ms. Hernandez noted that appellant attempted to get Mr. Jackson into his office but Mr. Jackson refused and appellant requested that he leave the premises. Ms. Hernandez stated that this was the third confrontation that she saw between Mr. Jackson and management. A witness statement from Gail Ewing, a rural carrier, observed at least two separate occasions in which Mr. Jackson lost his temper at work and either left or was asked to leave the premises. Reports from Dr. Chalasani, dated January 26 and April 18, 2005, noted that appellant was symptomatic and under stress and could not return to his previous job because of adverse conditions.

In a July 27, 2004 statement, Ms. Colbert noted that she was aware of the workplace incident with appellant and Mr. Jackson, who returned to work in April 2003. Prior to his return to the workplace she contacted the Employee Workplace Intervention Office and the Employee Assistance Office. In an undated statement, Mr. Daigle confirmed that a violent verbal incident occurred between Mr. Jackson and a clerk. He indicated that the Employee Assistance Program counselors and workplace violence specialists came to the workplace offering assistance to staff.

In a decision dated August 28, 2006, OWCP denied modification of the April 30, 2006 decision.

On February 24, 2007 appellant requested reconsideration. In a letter Cleola Moore, a counselor, noted that he participated in counseling from December 23, 2002 to February 11, 2003. In reports dated October 2, 2006 and February 7, 2007, Dr. Chalasani noted that appellant's depression and anxiety had not improved and he was totally disabled. A witness statement from Lisa Laurent, a coworker, noted that on February 5, 2003 she witnessed an outburst between Mr. Jackson and Cheryl Ellis. On February 6, 2003 she heard a verbal exchange between appellant and Mr. Jackson who yelled that Ms. Ellis "bumped me the other day and if she bumps me again, I'm going to put a hole in her ass." Appellant submitted a February 10, 2003 statement from Ms. Ellis who noted that, on February 6, 2003, Mr. Jackson screamed at appellant and then approached her in a threatening manner. Ms. Ellis stated that Mr. Jackson noted that he was "going to knock me to ground and beat me up." She felt threatened and appellant interceded, instructing Mr. Jackson to leave.

In a decision dated October 24, 2007, OWCP denied appellant's reconsideration request finding that the request was insufficient to warrant review of the prior decision.<sup>2</sup> In a May 7, 2009 decision, it denied modification of the prior decision.

On April 13, 2010 appellant requested reconsideration. He submitted a July 12, 2009 report from Dr. Chalasani who noted providing psychiatric treatment to appellant following an incident with Mr. Jackson. Appellant reported that Mr. Jackson become irate, loud and angry after talking about an incident with a coworker threatening that "if nobody will take care of her, I will" and "I will stomp on her." He advised that the incident was investigated but Mr. Jackson was allowed to return to work after two weeks. Dr. Chalasani noted that appellant felt threatened, nervous and anxious due to Mr. Jackson's presence at the employing establishment. As a result of this stress appellant's symptoms became refractory to treatment and he was totally disabled.

In a decision dated May 3, 2010, OWCP denied modification of the prior decisions.

### **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

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<sup>2</sup> Appellant appealed to the Board. In a December 19, 2008 order remanding case, the Board set aside the October 24, 2007 OWCP decision and instructed it to issue a merit decision on appellant's claim. Docket No. 08-1513 (issued December 19, 2008).

contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>3</sup>

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*,<sup>4</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>5</sup> 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 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.<sup>6</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>7</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>8</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>9</sup> 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.<sup>10</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP 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.<sup>11</sup> If a claimant does implicate a factor of employment, OWCP 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, OWCP must base its decision on an analysis of the medical evidence.<sup>12</sup>

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<sup>3</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>4</sup> 28 ECAB 125 (1976).

<sup>5</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>6</sup> *Lillian Cutler*, *supra* note 4.

<sup>7</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>8</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>9</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>10</sup> *See Lillian Cutler*, *supra* note 4.

<sup>11</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>12</sup> *Id.*

## ANALYSIS

When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>13</sup> Appellant alleged that his claimed condition arose, in part, because he was overwhelmed with performing his work assignments beginning in November 2002. He asserted that from November 2002 to March 2003, Mr. Daigle was out approximately 10 of 21 weeks and he became the single manager in the office from 5:00 a.m. to 5:00 p.m. and had additional duties. Appellant also noted having to perform split shifts. He further alleged that from December 2002 through March 2003, he was shorthanded two clerks every week and called other employing establishment daily for clerk assistance. The Board finds that appellant has established a compensable factor of employment with respect to his allegations of having stress from trying to do his job and cover for Mr. Daigle while he was out on leave from November 2002 to March 2003. Mr. Daigle confirmed that he was out of the office, that appellant had extra duties and that there were clerk shortages throughout the employing establishment. He indicated that “additional duties working over 10 hours a day, in all fairness there was some days ... we all do from time to time.” Mr. Daigle also confirmed that appellant worked split shifts. Appellant also attributed stress from a grievance filed against him by Ms. Babin with regard to providing her a light-duty assignment. As a supervisor, his regular duties involve handling grievances filed against him. Mr. Daigle confirmed that the grievance was filed against appellant in this matter. Appellant was in the performance of his regular or specially assigned duties while attending or responding to these matters and they are compensable factors under *Cutler*.<sup>14</sup>

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEwen*,<sup>15</sup> the Board held that an employee’s emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA 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 FECA 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.<sup>16</sup>

Appellant attributed stress, in part, to a verbal reprimand by Mr. Daigle in December 2002 for not scheduling an extra clerk for Christmas rush, conflicts over the proper procedure for requesting sick leave and the failure of management to provide guidance and support. The Board has found that an employee’s complaints concerning the manner in which a supervisor performs his

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<sup>13</sup> *Penelope C. Owens*, 54 ECAB 684 (2003); see *Lillian Cutler*, *supra* note 4.

<sup>14</sup> See *Lillian Cutler*, *supra* note 4.

<sup>15</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon*, 42 ECAB 566 (1991).

<sup>16</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

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 FECA. 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.<sup>17</sup> The Board notes that the assignment of work is an administrative function<sup>18</sup> and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.<sup>19</sup> The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding his work assignments. The evidence does not establish that the employing establishment acted unreasonably. As noted, Mr. Daigle indicated that appellant failed to perform his job with authority and accountability and was aware of the high volume of business during the holiday season and it was his responsibility to see that customer needs were met. Appellant presented no corroborating evidence to support that the employing establishment acted unreasonably in assigning work. He has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under FECA.

Appellant further alleged that his leave requests were denied September 2002, that from February 3 to 7, 2003 his supervisor requested that he work while on leave and that annual leave for Memorial Day was granted and then taken away. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>20</sup> The Board finds that the employing establishment acted reasonably in this administrative matter. The employing establishment denies appellant's allegations and he presented no corroborating evidence to support that the employing establishment erred or acted abusively in this matter.

Appellant asserted that he was improperly issued disciplinary actions on March 5 and June 18, 2003. His allegations that the employing establishment engaged in improper disciplinary actions, also relate to administrative or personnel matters, unrelated to his regular or specially assigned work duties.<sup>21</sup> Although the handling of disciplinary actions are generally related to the employment, it is an administrative function of the employer and not a duty of the employee.<sup>22</sup> The evidence is insufficient to establish that the employing establishment erred or acted abusively in this matter. Mr. Daigle and Ms. Colbert stated that the letters of warning were issued to appellant for failure to perform his duties. They indicated that he was provided with directive sessions which he

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<sup>17</sup> See *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>18</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>19</sup> See also *Peter D. Butt Jr.*, 56 ECAB 117 (2004); see *Barbara J. Latham*, 53 ECAB 316 (2002); (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of FECA).

<sup>20</sup> See *Judy Kahn*, 53 ECAB 321 (2002).

<sup>21</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>22</sup> *Id.*

chose to ignore. Although appellant has made allegations that the employer erred in this administrative matter, appellant has not provided evidence to substantiate any such actions were in error or unreasonable. He has not established a compensable factor pertaining to his performance assessment.

Appellant also alleged that he was verbally abused by Mr. Jackson on February 6, 2003. Appellant stated that Mr. Jackson became agitated and belligerent and used profanity and made threats against him. 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 FECA.<sup>23</sup> The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.<sup>24</sup> However, the record supports that the verbal altercation on February 6, 2003 rose to the level of verbal abuse and falls within the coverage of FECA.<sup>25</sup> Appellant submitted a witness statement from Ms. Hernandez, a carrier, who noted observing a violent confrontation between Mr. Jackson and appellant on February 6, 2003. Ms. Hernandez confirmed that Mr. Jackson spoke loudly and “threatened to strike a woman and knock her through the floor.” She indicated that after Mr. Jackson refused to go into appellant’s office appellant requested he leave the premises. Ms. Ewing, a carrier, also observed at least two separate occasions in which Mr. Jackson lost his temper at work. Similarly, Ms. Laurent noted that on February 5, 2003 she witnessed an outburst from Mr. Jackson and Ms. Ellis and on February 6, 2003, she heard a verbal exchange between appellant and Mr. Jackson. She indicated that Mr. Jackson yelled at appellant “she bumped me the other day and if she bumps me again, I’m going to put a hole in her ass.” A February 10, 2003 statement from Ms. Ellis noted that, on February 6, 2003, Mr. Jackson was screaming at appellant and then approached her threatening violence. Appellant’s allegations were also confirmed by Mr. Daigle who noted that appellant had a verbally violent confrontation with Mr. Jackson three times and each time it escalated in the amount of intimidation. Likewise, on September 21, 2003, Ms. Colbert noted being aware of the workplace incident with appellant.<sup>26</sup>

Appellant has established compensable factors of employment with regard to additional duties due to Mr. Daigle’s absence and staffing shortages, a grievance filed against him and the February 6, 2003 encounter with Mr. Jackson. Consequently, OWCP must base its decision on an analysis of the medical evidence. The case will therefore be remanded to OWCP for this purpose.<sup>27</sup> After such further development as deemed necessary, OWCP shall issue an appropriate merit decision.

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<sup>23</sup> *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

<sup>24</sup> *T.G.*, 58 ECAB 189 (2006).

<sup>25</sup> See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee’s reaction to coworkers’ comments such as “you might be able to do something useful” and “here he comes” was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor’s calling an employee by the epithet “ape” was a compensable employment factor).

<sup>26</sup> It also appears that appellant, as a supervisor, was responsible for interacting with Mr. Jackson when Mr. Jackson lost his temper. As appellant had to encounter Mr. Jackson as part of his job duties, this would also be an employment factor under *Cutler*. See *supra* note 4.

<sup>27</sup> *Tina D. Francis*, 56 ECAB 180 (2004).

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: October 5, 2011  
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