

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

L.N., Appellant)	
)	
and)	Docket No. 16-1815
)	Issued: May 22, 2017
U.S. POSTAL SERVICE, POST OFFICE,)	
Madison, WI, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 12, 2016 appellant filed a timely appeal from a July 7, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition in the performance of duty on January 22, 2015.

FACTUAL HISTORY

On January 22, 2015 appellant, then a 54-year-old station manager, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2015 he sustained stress and anxiety when he was subject to harassment and intimidation from Postmaster S.S. He alleged that Postmaster S.S. came to his office and started to berate him about office problems and staffing

¹ 5 U.S.C. § 8101 *et seq.*

issues. Appellant further alleged that the postmaster changed his work hours. He provided a witness statement from L.M., a coworker, who claimed that he had been called into appellant's office while the postmaster was talking about changing appellant's work hours. He related that appellant was obviously upset over the news. Appellant stopped work on January 22, 2015.

In a January 23, 2015 statement, Postmaster S.S. explained that on January 22, 2015 appellant had returned to work after being off work since December 8, 2014. He related that he went into appellant's office to bring appellant up-to-date on many changes that had occurred while appellant was absent. Postmaster S.S. explained that appellant became very irate when he informed appellant of a schedule change. He denied appellant's allegation that he had berated appellant. Postmaster S.S. recounted that appellant told him his schedule could not be changed because appellant was in a bid position. He alleged that appellant became extremely agitated and hostile so he asked that L.M. join them in appellant's office as a witness. Postmaster S.S. noted that he continued to try to bring appellant up-to-date on the current state of affairs, but appellant kept interrupting him and misinterpreting his information. He reported that, on several occasions, L.M. confirmed that Postmaster S.S. did not say the things that appellant insisted he said. Postmaster S.S. contended that during this interaction appellant never indicated to him that he was having any health issues.

Appellant received medical treatment from Dr. Edison U. Lim, Board-certified in family medicine. In a January 22, 2015 progress note, Dr. Lim recounted that appellant had returned to work on January 22, 2015 after being off work for a few weeks. Appellant told Dr. Lim that his supervisor confronted him and ordered him to change his work hours to a later shift. Dr. Lim noted that appellant believed he was being discriminated against. Appellant described a hostile work environment where his supervisor was mean, rude, and threatening. Upon physical examination, Dr. Lim observed that appellant had high blood pressure, felt nauseated, and was trembling. He reviewed appellant's history and noted that appellant did not have a history of high blood pressure. Dr. Lim diagnosed anxiety attack, work stress, and elevated blood pressure. In a work status note (Form CA-17), he indicated that appellant was unable to work due to stress and severe anxiety at work from January 22, 2015 continuing indefinitely.

In a January 27, 2015 letter, a health and resource management specialist for the employing establishment challenged appellant's FECA claim. He asserted that the medical evidence did not satisfactorily establish fact of injury or any causal relationship with employment.

By letter dated February 3, 2015, OWCP advised appellant that the evidence received was insufficient to support his traumatic injury claim. It requested that he respond to an attached questionnaire in order to substantiate the factual elements of his claim and provide medical evidence to establish that he sustained a diagnosed condition as a result of his employment. Appellant was afforded 30 days to submit the requested information.

Appellant submitted an undated statement from S.B., a union steward at the employing establishment. He indicated that on January 22, 2015 S.B. went to appellant's office and saw Postmaster S.S. and LM. S.B. related that the mood was one of extreme discomfort and tension. After some time passed he noticed that appellant left his office and went to the south side supervisor's office with his cell phone. S.B. noted that appellant looked completely distressed, his eyes were watery, and was making big hand gestures.

In a January 23, 2015 statement, B.A., the local union representative, explained that on January 22, 2015 she saw Postmaster S.S. and L.M. in appellant's office. She noted that the tension in the room was high and she could tell that appellant was very upset. B.A. explained that she returned to appellant's office to ask him if anything was wrong and observed that he was crying and his whole body was shaking.

Appellant also provided a January 29, 2015 statement by B.B., a manager at another postal station. He related that on January 22, 2015 appellant called him and was very upset because Postmaster S.S. had come into his office and verbally abused him about the station's productivity numbers, managed service points (MSP) scans, and disciplinary actions. Appellant informed B.B. that he felt he was being retaliated against because of an ongoing Office of the Inspector General (OIG) investigation into Postmaster S.S. and Area 1 Post Office Operations Manager (A/POOM) J.B. B.B. noted that within a day of this incident Postmaster S.S. was at appellant's employing establishment soliciting employees to write statements against appellant.

Dr. Lim continued to submit Forms CA-17 dated February 6 to March 20, 2015. He noted a date of injury of January 22, 2015 and reported clinical examination findings of severe hypertension. Dr. Lim related that appellant experienced severe anxiety and stress at work and indicated that appellant should remain off work indefinitely.

In a February 8, 2015 statement, T.N., the local union president for postal supervisors, explained that a few weeks ago he received a phone call from appellant and could tell he was very upset about a visit from Postmaster S.S. Appellant informed him that Postmaster S.S. made several criticisms of the operations at his postal station and advised appellant that effective immediately appellant's work schedule would be changed. T.N. pointed out that appellant had no advance notice of the change and had no opportunity to discuss the changes. He recounted that appellant was very emotionally upset about his treatment and that appellant's heart rate and blood pressure were racing. In a February 6, 2015 statement, T.N. verified that appellant had worked the hours of 7:00 a.m. to 4:00 p.m. for over six years.

Appellant responded to OWCP's questionnaire in a February 12, 2015 statement. He explained that on January 22, 2015 he returned to work at his usual hour of 7:00 a.m. after being out of work for a knee injury. At approximately 7:50 a.m. Postmaster S.S. came into his office and told him that he wanted to discuss some issues. Appellant alleged that Postmaster S.S. began to verbally abuse him about the productivity numbers in his office, penalty overtime that was "out of the roof," missed MSP scans, late carriers, and disciplinary action taken. He explained that he felt very upset, his heart started racing, and his left arm felt numb. Appellant related that Postmaster S.S. informed appellant that his hours would change from 7:00 a.m. to 4:00 p.m. to 8:00 a.m. to 5:00 p.m. He indicated that he was very upset by the news, started shaking, and felt like he was having a heart attack. Appellant explained that he wanted a witness to his encounter so Postmaster S.S. asked L.M. to join them in appellant's office. Appellant reported that he did not remember any more conversation between himself and his supervisor. He indicated that he sought treatment from Dr. Lim, his primary care physician, who put him off work indefinitely for stress and anxiety.

Appellant contended that he was confronted and harassed about productivity numbers and a change in work hours just after he returned from leave, which he felt was abusive and intimidating. He asserted that Postmaster S.S.'s behavior directed towards him did not follow

administrative or personnel procedures. Appellant believed that Postmaster S.S.'s behavior was in direct retaliation because of appellant's cooperation with the OIG investigation centered on Postmaster S.S. and A/POOM J.B. He asserted that the work schedule change made no sense and was punitive against him since the majority of his employees worked from 7:30 a.m. to 4:30 p.m.

Appellant submitted statements from other postal employees which described an August 4, 2014 incident when Postmaster S.S. entered appellant's office, slammed his door, and started yelling and provided general opinions about the hostile work environment. He submitted various e-mails dated December 3, 2014 between himself and S.P., an OIG agent, wherein appellant informed S.P. that appellant was seeking whistleblower protection because he feared for his job, his livelihood, and his family. Appellant also provided the employing establishment's policy on Workplace Harassment.

Dr. Lim continued to treat appellant and submit reports. In a February 6, 2015 attending physician's report (Form CA-20), Dr. Lim indicated that on January 22, 2015 appellant experienced severe anxiety secondary to work-related stress and severe reaction of hypertension. He reported examination findings of high blood pressure. Dr. Lim diagnosed severe work-related anxiety and malignant hypertension. He checked the box marked "yes" that appellant's condition was caused or aggravated by the described employment activity. Dr. Lim explained that appellant never had high blood pressure. He indicated that appellant was totally disabled indefinitely. In progress notes dated February 13 and 27, 2015, Dr. Lim related that appellant continued to show symptoms of restlessness, anxiety, depression, palpitations, and shortness of breath.

Appellant also submitted a psychological assessment dated February 16, 2015 by Dr. James Viggiano, a licensed clinical psychologist. He recounted a January 22, 2015 incident when a supervisor allegedly harassed and intimidated appellant as retaliation for an OIG report appellant had made. Dr. Viggiano related that appellant experienced symptoms such as rapid heart rate, shaking, nausea, numbness, and feeling confused. He noted that appellant had no prior mental health symptoms or treatment prior to the current episode. Dr. Viggiano reported that appellant was currently prescribed medication for anxiety, depression, and sleep by Dr. Lim. He diagnosed adjustment disorder with mixed anxiety and depressed mood. Dr. Viggiano opined that based on his assessment and corroboration from Dr. Lim and others appellant experienced "what can best be described as a panic attack (he thought he was having a heart attack) on January 22, 2015 that was directly related to the encounter with a supervisor noted above."

Dr. Lim submitted a letter dated February 20, 2015 noting that appellant had requested that he write a letter in support of his workers' compensation claim. He opined that appellant's high blood pressure was a physiological response to the confrontation he had with the Postmaster. Dr. Lim reported that it was clear that appellant's present emotional condition was brought about by the hostile work encounter as described in his statement. For this reason, he advised that appellant not return to the same work environment that brought about this medical condition as it would be severely detrimental to his health and life.

OWCP denied appellant's claim in a decision dated March 12, 2015. It accepted that the January 22, 2015 incident occurred as alleged and that appellant was diagnosed with a medical

condition. OWCP denied appellant's claim because he failed to establish that his alleged emotional injury occurred in the performance of duty.

On August 5, 2015 OWCP received appellant's reconsideration request. Appellant indicated that he was submitting a police department report, additional witness statements, March 15 and August 1, 2015 medical reports from Dr. Viggiano, and an OIG Investigative Report (mostly redacted).

Appellant submitted progress notes by Dr. Lim dated March 9 to June 17, 2015. Dr. Lim recommended that appellant remain off work. He continued to provide CA-17 forms until October 14, 2015, which indicated that appellant was off work indefinitely. Dr. Lim also provided handwritten examination notes dated February 14 to March 7, 2015.

Dr. Viggiano continued to treat appellant. In March 15 and August 1, 2015 letters, he opined although appellant's symptoms had improved, but that appellant was psychologically unfit to return to work because he feared further retaliation given the apparent lack of consequences for the current behaviors.

Appellant provided additional witness statements. In a July 19, 2015 statement, D.C., a postal manager, reported that during the time that appellant was the officer in charge of the employing establishment an investigation was started by the OIG about Postmaster S.S. and A/POOM J.B. He pointed out that within days of the OIG conducting interviews, Postmaster S.S. privately talked to each manager and told them to write a statement about appellant's inappropriate and/or illegal actions. D.C. noted that Postmaster S.S. and A/POOM J.B. made comments that they were going to get appellant.

In a handwritten July 19, 2015 statement, N.H., a coworker, indicated that on January 22, 2015 she heard yelling from appellant's office. She indicated that when she saw Postmaster S.S. leave, she went into appellant's office and observed that he was sitting there blushed and shaking. N.H. noted that she could not make out all that was said, but it was loud, unprofessional, and unacceptable for Postmaster S.S. to act like that.

G.P., a vehicle operations maintenance assistant, provided an August 16, 2015 statement. He related that on January 22, 2015 at approximately 8:00 a.m. he was at appellant's postal station to update appellant on the status of their long life vehicles (LLV). G.P. indicated that, when he got to the front window section, he heard Postmaster S.S. screaming at appellant about being a terrible manager. He noted that Postmaster S.S. was belittling appellant about being gone (when he was off for an injury) and the office performance in regard to penalty overtime and MSP scans. G.P. explained that he found Postmaster S.S.'s tone to be threatening and upsetting. He reported that when he looked into appellant's office he saw Postmaster S.S. directly in front of appellant's desk in an aggressive posture and leaning towards appellant. G.P. asserted that this was not a typical conversation between a postmaster and a manager, but instead a verbally abusive and intimidating confrontation that should not be tolerated in any workplace environment.

In a decision dated October 22, 2015, OWCP denied modification of the March 12, 2015 denial decision. It found that the evidence submitted failed to establish that appellant was treated abusively by the employing establishment on January 22, 2015 or that the employing

establishment acted in error. OWCP pointed out that being spoken to in a raised or harsh voice did not in itself constitute verbal abuse or harassment.

On February 4, 2016 OWCP received appellant's request, through his then representative, for reconsideration. In an 18-page statement, he asserted that Postmaster S.S. acted abusively and erroneously in a January 22, 2015 meeting with appellant. Appellant's representative requested that OWCP review the 13 precedent cases he cited, which supported the concept that a claimant may establish a compensable work factor when the employing establishment has committed error or acted in an abusive fashion. He pointed out that appellant submitted relevant witness statements which supported his claim for emotional distress due to Postmaster S.S.' abusive treatment and included excerpts from several of the witness statements. Appellant's then representative noted that he was also submitting several of the employing establishment's policy statements that clearly demonstrated that Postmaster S.S.'s actions on January 22, 2015 were not in compliance with the employing establishment's guidelines. He asserted that appellant had also submitted sufficient medical reports to establish a *prima facie* case for his emotional condition claim. Appellant's then representative provided citations to several cases, which he believed supported his claim and included excerpts from medical reports which showed that appellant's anxiety and depression resulted from Postmaster S.S.' threatening and abusive behavior on January 22, 2015.

Appellant continued to submit CA-17 forms dated November 6, 2015 to January 8, 2016 by Dr. Lim, which indicated that appellant was off work indefinitely.

In a January 7, 2016 statement, appellant described several meetings and interactions he had with Postmaster S.S. where S.S. yelled, berated, and cursed at appellant. He noted that he eventually spoke with an OIG Agent about investigating Postmaster S.S. and A/POOM J.B. and requested whistleblower protection.

In letters dated October 30, 2015 and January 25, 2016, Dr. Viggiano described the January 22, 2015 work incident and related that appellant began to experience rapid heart rate, shaking, nausea, numbness, and feelings of confusion due to Postmaster S.S.' behavior towards him. He described the medical treatment provided and the progression of appellant's symptoms. Dr. Viggiano opined that appellant's symptoms of anxiety and depression were caused by his traumatic encounter with Postmaster S.S. on January 22, 2015.

In a February 1, 2016 report, Dr. Lim pointed out that he repeatedly opined that the maltreatment appellant suffered on January 22, 2015 at the hands of Postmaster S.S. precipitated his hypertensive state. He noted that since there was a new postmaster and appellant was in great financial need, he could consent to his request to return to work during February. Dr. Lim also provided progress notes dated March 14, 2015 to January 16, 2016.

On February 15, 2016 appellant returned to work.

In a February 28, 2016 statement, appellant's then representative requested that OWCP consider a recent decision that may be applicable to appellant's case and provided the case citations. He asserted that, based on this decision, slight discrepancies in witness statements should not bar the acceptance of a claim. In another March 18, 2016 statement, the representative alleged that the factual evidence abundantly showed that appellant was loudly

berated and emotionally beaten on January 22, 2015 by his immediate superior concerning the performance of his office. He also alleged that causal relationship was fully addressed by his clinical psychologist and primary care physician. The representative contended that with no evidence in the contrary, OWCP was obligated to develop the record further. He provided several case citations which he believed supported his position.

By decision dated July 7, 2016, OWCP denied modification of the October 22, 2015 decision. It found that the evidence of record did not establish error or abuse by the employing establishment on January 22, 2015 when Postmaster S.S. raised his voice during a meeting. OWCP determined that appellant's reaction was a self-generated reaction, and not a compensable factor of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.² There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.³ 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 under FECA. Where the injury or illness results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment or by the nature of the work, the injury or illness comes within the coverage of FECA.⁵ On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not being given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.⁶

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁷ Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.⁸ Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

² *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

³ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

⁴ 28 ECAB 125 (1976).

⁵ *Id.*; see also *Trudy A. Scott*, 52 ECAB 309 (2001).

⁶ *William E. Seare*, 47 ECAB 663 (1996).

⁷ *J.F.*, 59 ECAB 331 (2008).

⁸ *M.D.*, 59 ECAB 211 (2007).

⁹ *Roger Williams*, 52 ECAB 468 (2001).

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not covered under FECA.¹⁰ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹¹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹²

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his regular duties, these could constitute employment factors.¹³ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁴

ANALYSIS

Appellant has alleged that he experienced stress and anxiety during a January 22, 2015 meeting with Postmaster S.S. OWCP denied appellant's claim finding that he failed to establish that his alleged emotional injury occurred in the performance of duty.

The Board finds that as a preliminary matter, appellant has not attributed his emotional condition to his regular or specially assigned duties or to a requirement imposed by the employing establishment or by the nature of the work as established in *Cutler*.¹⁵

Appellant has alleged that he was very upset about the fact that Postmaster S.S. wanted to change his work schedule to a later shift. Although the assignment of work duties is generally related to the employment, it is an administrative function of the employing establishment and not a duty of the employee.¹⁶ To establish that an administrative matter occurred in the performance of duty, a claimant must establish error or abuse on the part of the employing

¹⁰ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹¹ *William H. Fortner*, 49 ECAB 324 (1998).

¹² *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ *See supra* note 5.

¹⁶ *Supra* note 10.

establishment.¹⁷ Accordingly, the employee must submit evidence that management changed his schedule in error.¹⁸

The Board finds that appellant has not submitted evidence to demonstrate that Postmaster S.S.' proposed change to appellant's work schedule rose to the level of abuse or error. Appellant explained that it made no sense to change his work schedule to a later shift since most of his carriers worked from 7:30 a.m. to 4:30 p.m. Simply disagreeing with or disliking actions taken by management is insufficient to show error or abuse by the employing establishment.¹⁹ Appellant did not provide any evidence to establish that Postmaster S.S.' actions rose to the level of error or abuse on the part of the employing establishment. An employee's reaction to an administrative or personnel matter is not covered by FECA, unless there is evidence that the employing establishment acted unreasonably.²⁰ Because appellant has not presented sufficient evidence to establish that Postmaster S.S. acted unreasonably or that the employing establishment engaged in error or abuse in the change of schedules, he has failed to identify a compensable work factor.

Appellant has also alleged that during the January 22, 2015 meeting Postmaster S.S. was verbally abusive, intimidating, and harassing. He believed that Postmaster S.S.' behavior was in direct retaliation to his cooperation with the OIG investigation about Postmaster S.S. and A/POOM J.B.

Appellant explained that on January 22, 2015 he had just returned to work after being off work for a few weeks due to a knee injury. Postmaster S.S. entered his office and told appellant that he needed to speak to him about some issues that occurred during appellant's absence. Appellant asserted that Postmaster S.S. began to verbally abuse him about the productivity numbers in his office, penalty overtime "that was out of the roof," missed MSP scans, late carriers, and disciplinary action taken. He explained that he was very upset about the news, began shaking, and felt like he was having a heart attack. Appellant sought medical treatment from his primary care physician, who diagnosed elevated blood pressure, anxiety attack, and work stress.

The Board has recognized the compensability of verbal altercations and abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.²¹ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.²² The Board has held that the mere fact that a supervisor raised his voice during the course of a conversation is insufficient to warrant a finding

¹⁷ *Supra* note 11.

¹⁸ *L.S.*, 58 ECAB 249 (2006).

¹⁹ Mere disagreement or dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse. *Linda Edwards-Delgado*, 55 ECAB 401 (2004).

²⁰ *See Alfred Arts*, 45 ECAB 530 (1994).

²¹ *Harriet J. Landry*, 47 ECAB 543, 546 (1996).

²² *Marguerite J. Toland*, 52 ECAB 294 (2001).

that his actions amounted to verbal abuse.²³ The Board finds that there is conflicting evidence on this issue. Postmaster S.S. has denied appellant's allegations that S.S. had berated appellant. He explained that he attempted to bring appellant up-to-date regarding the current state of affairs, but appellant kept interrupting him and misinterpreting his information. The Board finds that appellant has not established a compensable employment factor in this regard.²⁴

In a July 19, 2015 statement, N.H. indicated that on January 22, 2015 she heard yelling from appellant's office and saw Postmaster S.S. leave appellant's office. She related that the yelling was loud and unprofessional. N.H., however, did not provide any detailed evidence of verbal abuse. She merely noted a raised voice, which she interpreted to be unprofessional. A raised voice does not establish a compensable factor of employment.²⁵

In an August 16, 2015 statement, G.P. reported that on January 22, 2015 he heard Postmaster S.S. screaming at and belittling appellant about being a terrible manager. He noted that he found Postmaster S.S.'s tone to be threatening and upsetting. Again, G.P. did not provide a specific example or other evidence of any distinct belittling or otherwise abusive statements made by the postmaster towards appellant. G.P. acknowledged that he was not in the room with appellant and the postmaster, but rather that he overheard conversation. The evidence of record establishes that the postmaster spoke with appellant in appellant's office on January 22, 2015, after appellant returned from prolonged sick leave. Since G.P. was not present in appellant's office his statement is of diminished probative value as it does not address how he knew that the postmaster's comments were abusively directed at appellant, rather than a recitation of events that had occurred at the employing establishment during appellant's absence.²⁶ The Board notes that supervisors must be allowed to perform their duties and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²⁷

Several other witnesses testified that they interacted with appellant shortly after his meeting with Postmaster S.S. and noticed that he was visibly upset and shaking. These witnesses however did not corroborate any abusive behavior towards appellant.²⁸

Accordingly, the Board finds that appellant has not established the January 22, 2015 behavior of Postmaster S.S. was abusive and was therefore a compensable factor of employment.²⁹ Appellant has not established that he sustained an emotional condition in the performance of duty.

²³ *Carolyn S. Philpott*, 51 ECAB 175 (1999).

²⁴ *See T.G.*, Docket No. 06-1369 (issued November 14, 2006).

²⁵ *Supra* note 21.

²⁶ *See J.F.*, 59 ECAB 331 (2007).

²⁷ *See T.C.*, Docket No. 16-755 (issued December 13, 2016).

²⁸ *See J.M.*, Docket No. 12-709 (issued March 15, 2013).

²⁹ *See K.L.*, Docket No. 07-992 (issued September 12, 2007).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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