

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

WILLIAM J. WEBB, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Coram, NY, Employer**

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**Docket No. 05-749
Issued: July 22, 2005**

Appearances:
William J. Webb, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 14, 2005 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated April 16 and December 30, 2004, denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these merit decisions.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On August 3, 2002 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim alleging that he sustained an emotional condition due to administrative error and abuse, harassment and retaliation by employing establishment personnel. He stated that on July 25, 2002 he received a disciplinary "discussion" from Supervisor Karl Pizzo because his vehicle was

not properly secured.¹ He told Postmaster Richard Delgado on August 2, 2002 that Mr. Pizzo and Supervisor Denise Del Vigo should be disciplined for not closing his vehicle window themselves to correct the security deficiency. Appellant alleged that on August 3, 2002 Ms. Del Vigo approached him in a hostile manner, “ranting and raving” in a “verbal assault.”² She told appellant not to ask Mr. Delgado about whether she had been disciplined and asked why he wanted to have this information. He responded, “You [will] find out in time.”³ Ms. Del Vigo asked him whether he was threatening her and he indicated that it was she who had threatened him. She asked him several times in a loud voice to explain how she had threatened him and he asked her to leave. Appellant advised Mr. Pizzo that Ms. Del Vigo had harassed him and his blood pressure had gone up. He left work and sought medical treatment. Appellant alleged that Mr. Delgado’s August 5, 2002 investigation of the incident was “incomplete, lopsided and impulsive.” He filed EEO complaints concerning harassment by Ms. Del Vigo, the discipline he received on July 25, 2002 and a denial of his request for annual leave.⁴ Appellant submitted medical reports dated August 3 to 9, 2002 indicating that he was disabled due to chest pain, anxiety and stress.

In notes dated August 2, 2002, Mr. Delgado stated that appellant asked whether he had disciplined supervisors regarding the security inspection deficiencies and he responded that it was the carriers who were responsible for leaving the vehicle windows open. Appellant suggested that the supervisors should have closed the windows themselves when they became aware of the problem. Mr. Delgado stated that he would look into the matter. In notes dated August 3, 2002, Mr. Delgado stated that Ms. Del Vigo advised him that she asked appellant why he wanted to know whether she had been disciplined following the security inspection. She noted appellant’s response that he did not need her permission to speak to anyone, that “This was [not] the end of it” and “You [are] going to get yours.” Ms. Del Vigo told appellant that he did not have to threaten her but he accused her of threatening him. In a statement dated August 4, 2002, Mr. Delgado stated that he questioned several employees who were in the vicinity during the August 3, 2002 incident. Tony Calandrillo stated that he heard appellant say, “Do [not] threaten me” and Ms. Del Vigo replied, “I am not threatening you.” Mr. Calandrillo indicated that there was no “really loud” talking. Mr. Delgado stated that Arnie Larsen reported that he

¹ Appellant indicated that he left his vehicle window open slightly on July 24, 2002. He alleged that he was unaware that leaving a window open slightly was a security breach. John Cascione indicated that he generally left his vehicle window open slightly until July 25, 2002 when employees were told to keep vehicle windows closed for security reasons. At the hearing held in this case, appellant alleged that the July 25, 2002 discussion was in retaliation for his Equal Employment Opportunity (EEO) complaints.

² At the hearing, appellant stated, “She did [not] use any vulgar language or anything. It was just a forceful language saying you better not ask the postmaster anything about me being disciplined. That [is] none of your business.”

³ On appellant’s claim form, Mr. Pizzo stated that he did not “see or hear [Ms. Del Vigo] rant or rave as stated in employee’s statement.”

⁴ Appellant filed an EEO complaint alleging that an April 24, 2002 request for annual leave was improperly denied by Mr. Pizzo in retaliation for his previous EEO complaints. Appellant indicated that Mr. Pizzo denied the request because the calendar was full and he asked appellant to submit his request at a later date. When he submitted a second request, Mr. Pizzo advised that he would reconsider the request when an employee who was in the process of resigning and who held one of the vacation slots that appellant was requesting, had officially resigned.

did not hear any loud talking or shouting. Mike Dillon stated that there was no loud talking and all he heard was Ms. Del Vigo asking appellant, "Why are you doing this to me?" Marie Paquette and Brian Lumsden indicated that they did not hear the conversation between appellant and Ms. Del Vigo.

In an August 5, 2002 statement, Ms. Del Vigo stated that she spoke quietly and briefly with appellant on August 3, 2002, requesting that he speak directly to her in the future if he wished to know whether she had been disciplined for any reason. She stated that appellant told her that he could ask the postmaster questions and stated, "You [are] going to get yours ... you do [not] even know what [is] happening but you [will] find out soon enough." Ms. Del Vigo asked appellant why he had threatened her and he responded in a loud voice that she had threatened him. She asked how she had threatened him but he just told her "Go away."

By letter dated September 21, 2002, the Office advised appellant that he needed to submit additional evidence to support his allegations such as witness statements or resolutions of EEO complaints or grievances against the employing establishment.

In a statement dated October 3, 2002 Mr. Calandrillo related that on August 3, 2002 Ms. Del Vigo's voice was loud enough for him to hear "every word she said." He stated that she said to appellant, "Do [not] ever ask the postmaster questions about me being disciplined" and "[it was not] any of [his] business." Mr. Calandrillo stated that appellant told her he would "ask the postmaster any questions he wanted to" and "the postmaster could choose not to answer[;] it was up to him." He stated that Ms. Del Vigo asked appellant why he wanted the information about her and he responded "[You] will find out in time." She walked away, then went back to appellant and asked if "that was a threat" and appellant told her that it was she who had threatened him. Mr. Calandrillo stated that Ms. Del Vigo raised her voice and asked several times, "How did I threaten you?" Appellant asked her to "please leave."

Julia McDermott stated that on August 3, 2002 Ms. Del Vigo walked by and said, "Do you want to see fireworks? Just follow me. I have something to say to [appellant] and there is going to be fireworks." She indicated that she did not hear the actual conversation between appellant and Ms. Del Vigo. Joe Manno stated that on August 3, 2002 Ms. Del Vigo passed by and asked of everyone in the area, "Do you want to see fireworks? Do you want to see sparks fly?" and then proceeded to appellant's workstation. Janet Bertsch stated that Ms. Del Vigo seemed "edgy" and stated, "You want to see sparks fly?" and "Well, you have [not] seen anything yet" and proceeded to the letter carriers area. Mary Papianou stated that Ms. Del Vigo seemed "agitated" after a conversation with an employee and then went to appellant's workstation.

By decision dated May 12, 2003, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an emotional condition causally related to a compensable factors of employment.

Appellant requested a hearing that was held on January 22, 2004.

By decision dated April 16, 2004, an Office hearing representative affirmed the May 12, 2003 decision.

Appellant requested reconsideration and submitted additional evidence. He also alleged that Mr. Calandrillo, Mr. Lumsden, Mr. Dillon and Ms. Paquette told him they were not questioned by Mr. Delgado.

In a June 20, 2003 National Labor Relations Board (NLRB) complaint, appellant alleged that the employing establishment discriminated against him by failing to discipline employees who committed infractions similar to his,⁵ he was threatened by management while preparing to file an EEO complaint and management acted improperly in promoting a supervisor who had harassed him.⁶

Appellant submitted copies of his letters to EEO personnel regarding his complaints against his supervisors.

By decision dated December 30, 2004, the Office denied modification of the April 16, 2004 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act⁷ provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁸

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*,⁹ the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within coverage under the Act.¹⁰ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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

⁵ At the hearing, appellant indicated that his NLRB complaint was dismissed as untimely filed.

⁶ At the hearing, appellant alleged that the employing establishment erred in promoting Ms. Del Vigo because she had harassed him.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *George C. Clark*, 56 ECAB ____ (Docket No. 04-1572, issued November 30, 2004).

⁹ 28 ECAB 125 (1976).

¹⁰ *George C. Clark*, *supra* note 8.

results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.¹¹

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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹² 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹³

Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.¹⁴ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.¹⁵ However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹⁶

ANALYSIS

Appellant alleged that the employing establishment unfairly denied his request for annual leave, disciplined him for leaving his vehicle window open, failed to discipline his supervisors for not closing his vehicle window themselves, failed to conduct a proper investigation of the August 3, 2002 incident and promoted a supervisor who had harassed him. These allegations involve administrative or personnel actions that are not compensable under the Act absent evidence of error or abuse. The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.¹⁷

¹¹ *Lillian Cutler*, *supra* note 9.

¹² *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹³ *Id.*

¹⁴ *Lillian Cutler*, *supra* note 9.

¹⁵ *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

¹⁶ *Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

¹⁷ *Janice I. Moore*, 53 ECAB 777 (2002).

Appellant alleged that he was improperly denied an April 24, 2002 request for annual leave by Mr. Pizzo in retaliation for filing EEO complaints. Mr. Pizzo explained that the calendar was full at the time appellant made his request but that he would reconsider the request when an employee, who held one of the vacation slots that appellant was requesting, had resigned. Mr. Pizzo provided a legitimate supervisory reason for denying appellant's leave request, that the leave calendar was already full, and there is insufficient evidence to establish error or abuse in the handling of this administrative matter. Therefore, it is not deemed a compensable employment factor.¹⁸

Appellant alleged that the employing establishment acted abusively in disciplining him on July 25, 2002 regarding his failure to close all his vehicle windows. However, the record reflects that appellant received an administrative discussion because a routine security check of the facility had revealed several security violations, including appellant's open vehicle window. Disciplinary actions concerning an oral reprimand, discussion or letters of warning for conduct are not compensable unless the employee shows that management acted unreasonably.¹⁹ There is insufficient evidence that the employing establishment acted unreasonably in giving appellant a reprimand for leaving his vehicle window open. At the hearing held in this case, appellant alleged that the July 25, 2002 discussion was in retaliation for his EEO complaints. However, there is insufficient evidence to establish this allegation. Although another employee, Mr. Cascione, indicated that he generally left his vehicle window open slightly until July 25, 2002 at which time employees were told to keep vehicle windows closed for security reasons, his statement is insufficient to establish that the employing establishment erred or acted abusively in its discipline of appellant. Mr. Cascione's statement reflects only that appellant was not the only employee to leave his vehicle window open. For these reasons, appellant's allegation regarding his discipline on July 25, 2002 is not deemed a compensable employment factor.

Appellant alleged that the postmaster should have administered discipline to his supervisors because they did not close his vehicle window at the time this security breach was discovered. However, Mr. Delgado provided a reasonable explanation in response to appellant's allegation, that he did not discipline the supervisors because it was the carriers who had committed the security violation. There is insufficient evidence that the employing establishment acted unreasonably in this administrative matter. Therefore, it does not constitute a compensable factor of employment.

Appellant alleged that Mr. Delgado did not conduct a proper investigation of the August 3, 2002 incident. However, the record reflects that he interviewed the employees who were in the vicinity of the August 3, 2002 incident in conducting his investigation. Although appellant alleged that Mr. Delgado did not speak to all the employees he claimed to have interviewed, he did not provide evidence to support this allegation. Therefore, appellant's allegation regarding Mr. Delgado's investigation of the August 3, 2002 incident is not deemed a compensable factor of employment.

¹⁸ See *Judy L. Kahn*, 53 ECAB 321 (2002).

¹⁹ *Id.*

At the hearing, appellant alleged that the employing establishment erred in its administrative act of promoting Ms. Del Vigo in light of his allegation that she had harassed him. However, management did not accept appellant's allegation that Ms. Del Vigo harassed him. Appellant did not provide sufficient evidence to establish that the employing establishment acted unreasonably in promoting Ms. Del Vigo. Therefore, this allegation does not constitute a compensable factor of employment.

In addition to appellant's allegations of administrative error and abuse addressed above, he alleged that he was harassed by Ms. Del Vigo on August 3, 2002 when she asked him why he had spoken to Mr. Delgado about whether he had disciplined her for the vehicle windows security violation. He alleged that she "ranted and raved" in a "verbal assault" and harassed him. The Board has held that, while verbal abuse may constitute a compensable factor of employment, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.²⁰ Additionally, to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.²¹ However, for harassment and discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.²²

Ms. Del Vigo responded to appellant's allegation by stating that she spoke quietly and briefly with him on August 3, 2002 concerning his discussion with Mr. Delgado about the supervisors and his July 25, 2002 discipline. She stated that she told appellant that she wanted him to speak to her directly in the future if he wanted to know whether she had been disciplined for any reason. He indicated that he could ask the postmaster any questions he wished and stated, "You [are] going to get yours ... you do [not] even know what [is] happening but you [will] find out soon enough." Ms. Del Vigo indicated that she asked appellant why he had threatened her and accused her of threatening him. At the hearing, appellant stated, "She did [not] use any vulgar language or anything. It was just a forceful language saying you better not ask the postmaster anything about me being disciplined. That [is] none of your business." The descriptions of the August 3, 2002 incident by Ms. Del Vigo and appellant do not establish that Ms. Del Vigo harassed or threatened appellant. His own testimony at the hearing indicates that Ms. Del Vigo was forceful in advising him that he should speak to her directly about any matters concerning her discipline by the postmaster, because any such discussions with him did not concern appellant, but she did not use abusive language or otherwise harass appellant.

The witness statements in this case do not establish that Ms. Del Vigo's August 3, 2002 discussion with appellant constituted harassment. Mr. Calandrillo stated that he heard appellant say, "Do [not] threaten me" and Ms. Del Vigo replied, "I am not threatening you." He indicated that the conversation was not loud. Mr. Larsen also stated that he did not hear any loud talking. Mr. Dillon stated that there was no loud talking and all he heard was Ms. Del Vigo asking

²⁰ *Judy L. Kahn, supra* note 18.

²¹ *Charles D. Edwards, supra* note 16.

²² *Donna J. DiBernardo, 47 ECAB 700 (1996).*

appellant, “Why are you doing this to me?” Ms. Paquette and Mr. Lumsden indicated that they did not hear the actual conversation between appellant and Ms. Del Vigo. Appellant alleged that these five witnesses later told him they were not questioned by Mr. Delgado. However, he did not provide evidence to establish this allegation. Three witnesses provided statements through appellant. Mr. Manno and Ms. Bertsch stated that Ms. Del Vigo passed by and asked, “Do you want to see sparks fly?” and then proceeded to appellant’s workstation. Ms. Papianou stated that Ms. Del Vigo seemed “agitated” when she walked to appellant’s workstation. Ms. McDermott stated that Ms. Del Vigo stated that she was going to see appellant and said, “Do you want to see fireworks?” However, she indicated that she did not hear the actual conversation between appellant and Ms. Del Vigo. None of the witness descriptions establishes that Ms. Del Vigo’s conversation with appellant on August 3, 2002 constituted harassment. It is clear that Ms. Del Vigo was displeased regarding appellant’s discussion with Mr. Delgado about her and thereafter approached him. However, the witness descriptions do not establish that the conversation rose to the level of harassment. As noted above, appellant’s own description of the incident at the hearing did not support his allegation of harassment.

Appellant submitted a written statement dated October 3, 2002 in which Mr. Calandrillo stated that on August 3, 2002 Ms. Del Vigo’s voice was loud enough for him to hear “every word she said.” He stated that she said to appellant, “Do [not] ever ask the postmaster questions about me being disciplined” and “[it was not] any of [his] business.” Mr. Calandrillo stated that appellant told her he would “ask the postmaster any questions he wanted to” and the postmaster could choose not to answer. He stated that Ms. Del Vigo asked appellant why he wanted the information about her and he responded “[You] will find out in time.” She walked away, then went back to appellant and asked if “that was a threat” and appellant told her that it was she who had threatened him. Mr. Calandrillo stated that Ms. Del Vigo raised her voice and asked several times, “How did I threaten you?” Appellant asked her to “please leave.” This second statement from Mr. Calandrillo is more detailed but is not inconsistent with the description of the incident in his first statement. It reflects a verbal disagreement between appellant and Ms. Del Vigo but is not sufficient to establish that she harassed or threatened appellant.

Appellant alleged that Ms. Del Vigo violated the employing establishment’s Joint Statement on Violence and Behavior in the Workplace and he submitted a copy. However, excerpts from publications are of no evidentiary value in establishing a claim for compensation as they are of general application and are not determinative as to whether specific conditions are the result of an employee’s employment.²³ The evidence is insufficient to establish that appellant was harassed by the employing establishment. Therefore, this allegation is not found to be a compensable factor of employment.

Appellant submitted copies of letters regarding his EEO complaints against his supervisors. However, the fact that appellant filed EEO complaints does not substantiate the allegations contained therein.²⁴ There is no indication in the record that the EEO complaints

²³ *Dominic E. Cappo*, 44 ECAB 484 (1993).

²⁴ *Michael A. Salvato*, 53 ECAB 666 (2002).

were resolved in appellant's favor with findings of wrongdoing by the employing establishment.²⁵ Appellant also alleged that he was threatened by management while preparing to file his EEO complaint. However, there is no evidence to substantiate this allegation.

Appellant has failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to establish that his emotional condition was causally related to a compensable factor of employment.²⁶

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 30 and April 16, 2004 are affirmed.

Issued: July 22, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

²⁵ In contrast to mere charges filed in an EEO complaint, a final decision constitutes evidence that is instructive as it provides a substantive review of the employee's allegations. See *Michael A. Deas*, 53 ECAB 208 (2001).

²⁶ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).