United States Department of Labor
Employees' Compensation Appeals Board

GARY RUSSO, Appellant	)	
and	)	**Docket No. 05-811**
	)	**Issued: July 6, 2005**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Seattle, WA, Employer	)	

Appearances:
Gary Russo, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On February 23, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 20, 2005, finding that he had not established an emotional condition due to factors of his federal employment. Pursuant to 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 met his burden of proof in establishing an emotional condition due to factors of his federal employment.

FACTUAL HISTORY

On November 15, 2003 appellant, then a 56-year-old mail processor, filed an occupational disease claim alleging that he developed stress, sleep problems and rumination due to his federal employment. He also submitted a form report from Dr. John Slightam, Board-

certified psychiatrist, diagnosing major depression and indicating with a checkmark "yes" that this condition was due to his employment activities of mixed messages and threats of dismissal.

In a letter dated December 16, 2003, the Office requested additional factual and medical evidence in support of appellant's claim. He responded on January 30, 2004 as well as submitting a statement dated November 5, 2003. Appellant listed the various supervisors and coworkers that he felt harassed him through uncomplimentary graffiti, rude comments on personal mail and threats. He noted that in May and June 2002 the union posted that he was no longer a member, (appellant had been a union steward). Appellant noted that he had Leroy Hancock removed from his craft bid on December 15, 2000 which he was a low level supervisor and alleged that Mr. Hancock confronted him on December 19, 2000 "in a street wise manner." Appellant also stated that Mr. Hancock recommended sensitivity training for him when he complained about a coworker who stated that she wanted to break a part of his body.

Appellant alleged that the union improperly withdrew a grievance he filed against Mr. Hancock. He noted that he unsuccessfully ran for union president and then left the union in April 2002. Appellant alleged that as a consequence he had received ineffective representation from the union in his disciplinary actions.

In support of his claim, appellant alleged that Mr. Hancock improperly dealt with leave issues. He also stated that on September 12, 2001 Mr. Hancock gave him a frivolous letter of warning. Appellant asserted that, while his mother was dying, Mr. Hancock improperly called him regarding leave usage. He stated that on July 30, 2002 he held him up for ridicule stating that appellant had misrouted mail on the previous evening.

Appellant alleged that Lulu DelRosario, a supervisor, accosted him on August 15, 2002 and denied him union time to write a statement regarding her behavior.

On February 23, 2003 appellant refused to report to Cornelius Rosser, a supervisor, when he motioned to him "with his hand to come to him like a dog." He stated that he informed Mr. Rosser that he felt intimidated and threatened and then reported to his assigned machine. Mr. Rosser then gave appellant a direct order to report to the supervisor's conference room. Appellant used a roundabout route and requested aid from a security officer before reporting to the conference room. His second line supervisor, Albert Jimenez, appeared in the conference room and denied appellant's request for sick leave and placed him in an emergency nonpay status. Appellant alleged that Mr. Rosser stopped his pay improperly. He also referenced a March 20, 2003 letter of warning. Appellant also stated that Mr. Rosser lunged at him and improperly issued a suspension letter on April 13, 2003. He stated that he received another suspension on May 6, 2003 for forgetting his identification badge. Appellant asserted that Mr. Hancock improperly sent him home on May 12, 2003 as he did not have medical clearance and improperly required him to report to work on May 13, 2003. He alleged that he received an improper suspension on May 12 and 13, 2003 as he was not paid for those days.

Appellant alleged that Mr. Rosser became enraged during a July 2, 2003 grievance meeting and abruptly ended the meeting. He stated that Mr. Hancock improperly accosted him after he had signed out for lunch on July 9, 2003.

To support his allegations, appellant submitted a series of allegations made at the time of the events. On June 29, 1992 he stated that Edmund Bertrand repeatedly yelled at him and called him names causing him to feel threatened and embarrassed.

In a statement dated February 23, 1993, appellant asserted that he was subjected to harassment and unwanted attention from Evelyn Williams. He alleged that she attempted to express that he was a bad person and that she was disgusted with him.

Appellant submitted a memorandum of complaints addressed to Betty Gardner and dated June 8 and 9, 1993, alleging that he was subjected to harassment by coworkers through graffiti on restroom walls, in a gutter and on the back of a console. He stated that the employing establishment investigated and removed the writing in the restroom, but failed to address the other graffiti. Appellant also alleged discrimination and prejudice on the part of the employing establishment as he was not considered for a management position, as he was not reinstated on the safety committee and as he received a 'bogus' evaluation documenting conduct problems. In a complaint dated June 28, 1993, he stated that Jerry Balmes, a coworker, threatened to engage him in an altercation. On June 28, 1993 appellant alleged that Mr. Balmes made an obscene gesture.

On October 31, 1996 appellant alleged that Dale Eggers called him a "pimple face" in front of coworkers in an attempt to provoke him. He alleged on April 14, 1997 that Mae Roberts looked at him "out of the side of her face."

Appellant filed a complaint on January 22, 2001 regarding statements by Ayanna Porter, in which she allegedly threatened to break his fingers. Mr. Hancock completed an investigative report on January 27, 2001 and found that appellant was laughing and pointing even after being asked to stop and that this provoked comments by Ms. Porter. Appellant alleged that Ms. Porter threatened to break his finger if he did not stop pointing at her. Mr. Hancock stated that, if he had stopped when asked the matter would have ended. Appellant noted that Ms. Porter was leaving and stated that he could use sensitivity training.

In a statement dated December 4, 2001, appellant alleged that Mr. Hancock threatened, harassed, provoked and baited him through letters of warning and name calling. The employing establishment denied a grievance filed by appellant on February 23, 2001. He had alleged that Mr. Hancock challenged him and suggested that, if appellant had a problem, it could be handled with a word from him. Appellant noted that he had pursued a grievance to have Mr. Hancock's job removed. The employing establishment did not conduct an investigative interview with Mr. Hancock, who wrote a statement denying any threats or inappropriate actions.

Appellant also submitted a separate complaint dated April 30, 2002 regarding the behavior of Mr. Rosser. He alleged that Mr. Rosser yelled at him making him feel harassed, intimidated and threatened.

On August 12, 2002 appellant noted that he requested that Leroy Hancock be removed as his administrative supervisor. He alleged that Mr. Hancock reported in a group meeting on July 30, 2002 appellant's poor performance, holding him up for ridicule. Appellant alleged that Mr. Hancock had shown a pattern of provoking him and gave examples which he noted were not

witnessed. He noted that Mr. Hancock suggested on January 27, 2001 that appellant could use sensitivity training. Appellant also alleged that Ben Wakefield, a supervisor, responded to a grievance by suggesting that he go play in traffic. Finally, he stated that Pius Falaniko threatened and accosted him and that Fred Santiaguel refused to discipline Mr. Falaniko even after observing an inappropriate interaction.

Appellant alleged in a statement dated August 26, 2002 that Ms. DelRosario, a coworker and acting supervisor, yelled at him, ordered him to clean up a mess on a machine and denied him appropriate union time to write a statement. In a statement dated September 5, 2002, James Guffey, a manager, stated that he investigated appellant's allegations of provocation, intimidation, threats and harassment by Ms. DelRosario and found that there was no evidence to substantiate his allegations.

On September 10, 2002 the employing establishment reached a settlement agreement through mediation without prejudice and found that appellant should place the mail in the standard direction, that there should be minimal contact between the parties and that, if he felt threatened by a supervisor, he would be removed from the situation, a meeting be arranged and discipline discussed.

The employing establishment settled a grievance without prejudice on December 10, 2002 by agreeing to pay appellant one hour of overtime.

In a letter dated February 23, 2003, the employing establishment placed appellant in an off-duty status without pay due to failure to follow instructions and insubordination. On March 20, 2003 he received a letter of warning for failure to follow instructions on February 23, 2003 when he allegedly refused a direct order to report to the conference room.

Mr. Rosser issued appellant a seven-day suspension on April 13, 2003 for conduct unbecoming a postal employee. He found that appellant threw a stack of letter tubs in anger on March 20, 2003. Mr. Rosser considered that he had received a letter of warning on March 20, 2003 for failing to follow instructions in reaching this disciplinary action.

The employing establishment responded to appellant's allegations and stated that corrective actions were taken toward him to correct disturbing and reoccurring behavioral problems. The supervisors responded individually and denied appellant's allegations of harassment or error in their actions.

By decision dated January 20, 2005, the Office denied appellant's claim, finding that he failed to substantiate a compensable factor of employment.

LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law does not apply to each and every injury or illness that is somehow related an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of worker's compensation. Where the disability results from an employee's emotional reaction to his regular of specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation

Act.[1] 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.[2]

Although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[3] Reactions to disciplinary matters such as letters of warning and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable until it is established that the employing establishment erred or acted abusively in such capacity.[4]

The Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.[5]

Verbal altercations and difficult relationships with supervisors and coworkers, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. 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 the Act.[6]

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[7]

ANALYSIS -- ISSUE 1

Appellant has submitted extensive statements alleging harassment, such as graffiti, inappropriate looks and remarks by supervisors and coworkers which he felt caused or contributed to his emotional condition. However, he has submitted no evidence to substantiate

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[3] *James P. Guinan*, 51 ECAB 604, 607 (2000).

[4] *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

[5] *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997); *Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

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

[7] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

that the alleged harassment occurred as alleged. As noted above, mere perceptions of harassment are not compensable.[8] Therefore, these allegations are not compensable.

Appellant also made detailed allegations of abusive treatment by his supervisors in regard to denial of leave, questioning leave when he had asked for no telephone calls and improper issuance of absence without leave. The Board has held that there must be error or abuse in the administration of leave in order for this personnel matter to be compensable under the Act.[9] In support of his claim, appellant submitted a grievance resolution indicating that he should receive one hour of overtime, however, this grievance was settled without prejudice to either party and consequentially does not establish error or abuse on the part of the employing establishment.[10] As he has not established error or abuse in regard to these personnel matters, appellant has not established these events as compensable factors of employment.

Appellant also alleged that he was improperly disciplined through letters of warning, suspensions and placement in emergency off-duty status. These allegations also relate to administrative or personnel matters and he has failed to submit any evidence to establish error or abuse on the part of the employing establishment.

In regard to appellant's allegation that the union failed to provide adequate representation regarding his grievances and disciplinary actions, as noted previously the Board has found that union matters are personal in nature and are not considered to be within an employee's course of employment or performance of duty.[11] As these alleged difficulties with the union did not occur in the performance of duty, he has not established that these issues were compensable factors of employment.

Appellant has also alleged that he was subjected to verbal abuse by his supervisors and coworkers, including Ms. Porter. He did not submit any witness statements or other evidence supporting that his supervisors or coworkers yelled at him or called him names as alleged. While these allegations are sufficiently detailed by the claimant, there is no support in the record to establish that the verbal abuse occurred as alleged and appellant has not established compensable factors in regard to these allegations.

Appellant has submitted evidence that Ms. Porter threatened to break his finger when he repeatedly pointed at her and refused to stop when she requested. 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 the Act.[12] Ms. Porter's lone statement is not sufficiently a credible threat to rise to the level of verbal abuse due to its

[8] *Id.*

[9] *James P. Guinan*, *supra* note 3.

[10] The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse. *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[11] *Dinna M. Ramirez* and *Larry D. Passalacqua*, *supra* note 5.

[12] *Marguerite J. Toland*, *supra* note 6.

isolated nature and the evidence of record that establishes that her statement was made in response to appellant's provocative acts. For these reasons, the Board finds that this is not a compensable factor of employment.

Appellant also alleged that Mr. Wakefield's written response to a grievance suggesting that appellant go play in traffic was abusive and contributed to his emotional condition. The Board notes that this isolated written remark, while unprofessional, is not sufficiently abusive or inappropriate to rise to the level of a compensable factor of employment.[13]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[14]

CONCLUSION

The Board finds that appellant has not substantiated a compensable factor of employment. As he has not established any compensable employment factors, the Office properly denied his claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 20, 2005 is affirmed.

Issued: July 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[13] *See id.*

[14] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).