United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 07-2200**
	)	**Issued: July 9, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Shirley, NY, Employer	)	

Appearances:
Thomas Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 30, 2007 appellant filed a timely appeal from a June 7, 2007 decision of the Office of Workers' Compensation Programs which affirmed a February 15, 2006 decision denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

FACTUAL HISTORY

On September 9, 2005 appellant, then a 55-year-old letter carrier, filed an occupational disease claim, Form CA-2, alleging depression and anxiety due to increased stress at work. He first became aware of his condition in November 1997. Appellant stopped work on June 23, 2005.

In a September 9, 2005 statement, appellant alleged that from June 20 to 23, 2005, John Trehan, the postmaster, harassed and belittled him. On June 20, 2005 Mr. Trehan screamed at him when he called the office and requested to speak to Greg Catalano, his manager, to seek assistance on his mail route. On June 23, 2005 appellant notified Mr. Trehan that he was running late while delivering his mail route and Mr. Trehan proceeded to follow him on his route and stated in a sarcastic manner, "Gee, for someone that's so concerned about safety, you were n[o]t using a hands-free device while talking on your cell phone." He alleged that, on June 23, 2005, when returning to the employing establishment, Mr. Trehan was waiting for him on the office platform and sarcastically stated: "so what are you here for, lunch?" On June 22, 2005 the work floor was rearranged and appellant was moved to another area near a coworker, Kim Presanto, whose perfume aggravated his allergies. He alleged that, on June 20, 2005, Mr. Trehan denied his request to change his work schedule to accommodate his doctor's appointment. Appellant alleged that, on June 23, 2005, Mr. Trehan improperly monitored him while he was delivering his mail route.

Appellant submitted a discharge summary from the Veteran's Administration Medical Center dated July 1, 2005. It noted he was a Vietnam veteran and worked for the employing establishment for 20 years and recently experienced problems with his supervisor. Other outpatient treatment records from July 2 to December 20, 2005 noted appellant's treatment for work-related stress.

On December 5, 2005 the Office asked appellant to submit a detailed description of the employment factors or incidents that he believed contributed to his claimed illness. In a letter of the same date, the Office requested the employing establishment address appellant's allegations.

In a November 21, 2005 statement, Mr. Trehan noted that, from June 21 to 23, 2005, appellant returned to the employing establishment later than scheduled after delivering his route. Appellant reported that children playing in the streets required him to drive more safely and take longer to finish his mail route. On June 23, 2005 Mr. Trehan drove appellant's mail route to investigate the safety issue of children playing in the streets and saw appellant driving westbound while talking on a cell phone. The postmaster told appellant that he violated employing establishment safety rules and New York motor vehicle laws by driving while talking on a cell phone. Mr. Trehan noted that appellant returned to the employing establishment and punched out for the day with his undelivered mail still in his truck. He advised that his tenure as acting postmaster started May 14, 2005 and he instituted an aggressive street management program. In a February 14, 2006 statement, Mr. Trehan denied screaming at appellant on June 20, 2005, rather he spoke to him for less than 25 seconds. With regard to the relocation of workstations, he advised that all 16 carrier routes were moved in numerical order in a "U" fashion as required by the district and headquarters to increase efficiency. Mr. Trehan also redesigned the clerk operations to provided for an even flow of mail through the building. He noted that appellant had a grievance with Ms. Prestano and that they had several shouting matches in the workroom. Mr. Trehan did not permit employees to change their schedule to attend medical appointments; however, if the employee completed their duties, a change of schedule would be approved and the employee permitted to use sick or annual leave. He also made changes to staffing, hours of work, bid assignments, mail flow, window hours and the floor plan. In a February 14, 2006 statement, Mr. Catalono noted that, after Mr. Trehan observed appellant talking on his cell phone while driving his mail route, he returned to the employing establishment and punched out for the

day. In a February 14, 2006 statement, he noted that from May 2001 to May 2005 he permitted carriers to change their schedule and leave the delivery area during their lunch break to accommodate medical appointments. Mr. Catalono noted that in May 2005 Mr. Trehan advised supervisors that employees were required to use sick time to attend medical appointments during lunch.

In a statement dated December 21, 2005, appellant reiterated his allegations against Mr. Trehan. He submitted witness statements from Robert Stadelman, Robert Bertsch and Michael Tricarico. They noted that appellant's workstation was moved away from Ms. Prestano due to his allergic reaction to her perfume and, after several years, Mr. Trehan relocated appellant's workstation near to Ms. Prestano in 2005.

In a February 15, 2006 decision, the Office denied appellant's claim finding that his claimed emotional condition did not arise in the performance of duty.

On February 2, 2007 appellant requested reconsideration. In a brief dated January 24, 2007, he contended that the Office erred in denying his claim.

In a March 1, 2007 statement, Mr. Trehan noted that on June 23, 2005 he performed street supervision of appellant to determine the reason he was running late in delivering his route. He observed appellant driving while talking on a cell phone and informed him that the state motor vehicle laws prohibited this. Mr. Trehan advised that he never ridiculed appellant or made sarcastic remarks. He questioned appellant's statement that he could not work near Ms. Prestano because of an allergy to her perfume as he was previously employed in a perfume factory.

By decision dated April 13, 2007, the Office denied modification of the February 15, 2006 decision.

On April 18, 2007 appellant asserted that the Office did not afford him an opportunity to review and respond to the comments of Mr. Trehan. In a decision dated April 26, 2007, the Office vacated the April 13, 2007 decision and provided appellant 30 days to respond to the statement of Mr. Trehan.

On May 21, 2007 appellant asserted that he did not previously work for a perfume company, rather, he worked in the shipping department of a company that packaged promotional giveaways of cosmetics. On one occasion, he requested that Ms. Prestano not wear excessive perfume and she became angry. Appellant asserted that Mr. Trehan's decision to move his workstation near Ms. Prestano was arbitrary and abusive and evidence of his failure to accommodate appellant's health condition.

In a June 7, 2007 decision, the Office denied modification of the February 15, 2006 decision.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, a claimant 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.[1]

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,*[2] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[3] 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 under the Act.[4] 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 results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[5] 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 under the Act. 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.[6]

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.[7] 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

---

[1] *Donna Faye Cardwell,* 41 ECAB 730 (1990).

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Anthony A. Zarcone,* 44 ECAB 751, 754-55 (1993).

[5] *Lillian Cutler, supra* note 2.

[6] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

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

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[8]

ANALYSIS

Appellant alleged that Mr. Trehan, harassed, verbally abused and demeaned him. He alleged that a pattern of harassment began on June 20, 2005, when Mr. Trehan screamed at him after he called the office to request assistance on his mail route. Appellant alleged that, on June 23, 2005, he notified Mr. Trehan that he was running late while delivering his route and Mr. Trehan proceeded to follow him and stated sarcastically, "Gee, for someone that's so concerned about safety, you were n[o]t using a hands-free device while talking on your cell phone." On June 23, 2005 after returning to the employing establishment, Mr. Trehan ridiculed him by stating in a sarcastic manner "so what are you here for, lunch?" To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these may constitute employment factors.[9] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[10]

The factual evidence does not support appellant's allegations. The employing establishment submitted statements from Mr. Trehan dated November 21, 2005 and March 1, 2007. Mr. Trehan noted that from June 21 to 23, 2005, appellant returned to the employing establishment later than scheduled after delivering his route. He wanted to learn the reason for appellant's delay and, on June 23, 2005, performed street supervision of appellant. Mr. Trehan witnessed appellant driving a mail truck while talking on his cell phone, which violated employing establishment safety rules and also state motor vehicle laws. His conversation with appellant lasted 25 seconds and he denied having ridiculed, screamed at or made sarcastic remarks to him. Mr. Trehan advised that he instituted a street management program whereby all carriers who called to report running behind schedule were visited by Mr. Trehan or a supervisor. The factual evidence fails to support appellant's claim that he was harassed or verbally abused by Mr. Trehan.[11] These allegations do not rise to a compensable employment factor.[12]

Appellant has not submitted sufficient evidence to establish harassment by his supervisor.[13] Although he alleged that his supervisor harassed and intimidated him and engaged

---

[8] *Id.*

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

[10] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[11] *See Michael A. Deas*, 53 ECAB 208 (2001).

[12] S*ee Paul Trotman-Hall,* 45 ECAB 229 (1993).

[13] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

in actions which he believed constituted harassment, he provided insufficient evidence to establish his allegations.[14]

To the extent that appellant alleged verbal abuse, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[15] The Board finds that the evidence of record is not sufficient to establish that appellant's supervisors engaged in verbal abuse. Appellant provided no corroborating evidence or witness statements to establish his allegations.[16] Mr. Trehan denied that he screamed, threatened, made sarcastic remarks, harassed or spoke to appellant in a hostile manner and there is no corroborating evidence to support that the employing establishment erred or acted abusively. Appellant has not otherwise shown how supervisory comments or actions rose to the level of verbal abuse or otherwise fell within coverage of the Act.[17]

Other allegations by appellant relate to administrative or personnel actions. In *Thomas D. McEuen,*[18] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[19]

Appellant alleged that, on June 22, 2005, Mr. Trehan rearranged the workstations and moved him next to Ms. Presanto, a coworker, whose perfume aggravated his allergies. He asserted that Mr. Trehan's decision to move his workstation next to Ms. Prestano was arbitrary and showed his failure to accommodate appellant's health condition. However the Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or

---

[14] *See William P. George*, *supra* note 13.

[15] *Charles D. Edwards*, 55 ECAB 258 (2004).

[16] *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[17] *See Judy L. Kahn*, 53 ECAB 321 (2002) (the fact that a supervisor was angry and raised her voice does not, by itself, support a finding of verbal abuse).

[18] *See Thomas D. McEuen, supra* note 6.

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

management action will not be actionable, absent evidence of error or abuse.[20] The evidence does not establish that management erred or acted abusively with regard to these allegations. He submitted witness statements from coworkers who noted that appellant's workstation was previously moved away from Ms. Prestano due to his allergic reaction but that in 2005 he was relocated next to her. However, these statements do not support that the employing establishment erred or acted abusively. The record indicates that Mr. Trehan implemented a workstation layout for delivery operations which was adopted by the district and headquarters, in which all 16 carrier routes were moved in numerical order to conform to a "U" fashion. He advised that this arrangement increased efficiency. Mr. Trehan noted that appellant had a history of verbal outbursts and shouting matches with Ms. Prestano on the workroom floor that were never addressed by management. The evidence does not indicate that the employing establishment acted unreasonably. Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant alleged that on June 20, 2005, Mr. Trehan denied his request to change his work schedule to accommodate a medical appointment. 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.[21] Mr. Trehan advised that he did not permit employees to change their schedule on their own to attend a medical appointment during lunch breaks. However, if the employee completed their duties, a change of schedule would be approved and the employee would be permitted to use sick or annual leave. There is no evidence that appellant's supervisor erred or acted unreasonably in requesting that he use sick or annual leave to attending medical appointments during work hours. The Board finds that the employing establishment acted reasonably in this administrative matter and appellant has not established a compensable factor of employment with respect to this allegation. Appellant has not established error or abuse with regard to this matter. Instead, the employing establishment acted reasonably in its administrative capacity.

Appellant alleged that, on June 23, 2005, Mr. Trehan improperly monitored him while he was delivered his mail route. Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.[22] The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Appellant has not presented evidence to support that the employing establishment erred or acted abusively with regard to monitoring his work. Mr. Trehan described a street management program, noting that all carriers who reported being behind schedule were visited by a supervisor. From June 21 to 23, 2005, appellant reported being behind schedule due to children playing in the streets. On June 23, 2005 Mr. Trehan performed street supervision of appellant to investigate this safety issue. The Board finds that the evidence does not establish that the postmaster acted unreasonably in monitoring appellant's work.

---

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

[21] *See Judy L. Kahn, supra* note 17.

[22] *See Dennis J. Balogh*, 52 ECAB 232 (2001); *See also John Polito*, 50 ECAB 347 (1999).

Consequently, appellant has not established his claim for an emotional condition as he has not attributed his claimed condition to any compensable employment factors.[23]

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2008
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

[23] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki,* 43 ECAB 496 (1992).