

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

R.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bozeman, MT, Employer**

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**Docket No. 10-1989
Issued: June 8, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 29, 2010 appellant filed a timely appeal from a June 8, 2010 merit decision of the Office of Workers' Compensation Programs that denied his emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ and 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 to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 24, 2009 appellant, then a 60-year-old letter carrier, filed an occupational disease claim alleging that he sustained an emotional condition causally related to factors of his federal employment. He attributed his condition to a hostile and intolerable work environment by

¹ 5 U.S.C. § 8101 *et seq.*

station manager, Larry Hoodack. Appellant first realized his condition and its relationship to his federal employment on November 13, 2008. He stopped work May 26, 2009 and did not return.

In an attachment, appellant explained his post-traumatic stress disorder (PTSD) was aggravated as of November 13, 2008 after Mr. Hoodack told him his work schedule was going to be changed from his scheduled days off of Saturdays and Sundays to nonconsecutive rotating days off and a change in start time from 7:30 a.m. to 8:00 a.m. He contended the reasons given for the change were untrue and he refused to sign the new job offer. Appellant called Chantelle Castillian, the injury compensation specialist, and was told that the employing establishment had made a mistake with regards to his December 6, 2007 permanent job offer as his carrier rotating schedule should have been implemented as opposed to Saturdays and Sundays off. He again refused to sign the job offer when Mr. Hoodack asked on November 24 and 27, 2008. Appellant was told during the November 27, 2008 conversation to put his refusal in writing the same as someone who refused to sign a letter of warning. He alleged he needed two days off consecutively to help recover from his May 21, 2007 neck surgery, as originally agreed upon.

In a May 26, 2009 letter, appellant noted he returned to work on May 26, 2009 after being off work since April 16, 2009 while recovering from surgery. He kept "resident questionnaires" at his case to assist with customer service, but could not find them when he returned to work. When appellant asked Mr. Hoodack where his papers were, Mr. Hoodack responded, "We [do not] need those anymore," to which appellant replied, "This is not good customer service." Mr. Hoodack called appellant into his office and stated that "those papers were unnecessary" and he "knows everything about delivering mail." Appellant replied that Mr. Hoodack did not know anything about delivering mail or about customer service. Mr. Hoodack then called Sandy Robertson, a union representative, into the office where the dispute about the questionnaires continued. Appellant stated that Mr. Hoodack told him he should quit if he did not get along with him, to which appellant responded, "You [should] quit." Mr. Hoodack then left the room. Appellant went to his case and filled out a sick leave slip but Mr. Hoodack refused to sign it. When Mr. Hoodack asked why he was sick, appellant responded "it was none of his business." Mr. Hoodack, Mr. Robertson and appellant then went into the workroom office again and exchanged words over Mr. Hoodack's refusal to sign the sick leave slip. He told appellant to get out of the building or be forcibly removed. Appellant left the building and contacted his attorney. He stated he won his schedule change grievance. Appellant felt threatened by Mr. Hoodack's mannerism during the May 26, 2009 altercation and considered Mr. Hoodack to be a physical threat to all workers on the workroom floor. He alleged that Mr. Hoodack disposed the questionnaire papers while he was on sick leave in order to induce a reaction which would be harmful to his career and personal well being. Mr. Hoodack knew from a previously settled grievance that appellant was a Vietnam veteran with PTSD. Appellant asserted Mr. Hoodack's attitude created a hostile work environment. In a separate statement he noted filing several grievances against Mr. Hoodack based on his harassing management skills.

In a July 15, 2009 statement, the employing establishment stated management modified the job offer to comply with appellant's regular schedule before his date of injury. This was an administrative error that was explained to appellant and there was no malice or ill will. The existing job offer was noncompliant with the contractual applications of the union contract. Appellant's job prior to his injury consisted of rotating days off as it was with all city letter carriers. When he returned to work, he should have been assigned a modified job offer in

accordance with the Employee Relations Manual, which was during the hours when the employee regularly works.

In an undated statement, Mr. Robertson stated that he was called into Mr. Hoodack's office in response to a dispute in which Mr. Hoodack apparently had thrown away customer questionnaires. He noted that Mr. Hoodack determined the questionnaires were not necessary over the objections of appellant. Mr. Robertson told him that he also kept such records and that Mr. Hoodack instructed Mr. Robertson to discard them. As they left the office, he asked appellant if he was alright and he stated "no." Appellant returned to Mr. Hoodack's office with a sick leave form but he refused to sign it and "again the three of us were in the office." When he entered the office, appellant stated to him, "Sandy, tell him that [it is] in the contract" and "[b]efore I could answer Mr. Hoodack asked [appellant] why he was sick and he [stated] it was none of his business. Mr. Hoodack then yelled, 'get out of the building ... get out or [I will] have you physically removed.'" This started an argument between the two of them and "I yelled at them to 'shut up' and 'stop it.'" Mr. Robertson indicated that they both stopped and he told Mr. Hoodack that he needed to talk to appellant in private.

In an August 5, 2009 letter, Mr. Hoodack stated that on May 26, 2009 he had a series of conversations with appellant concerning his removal of a list of customers in accordance with previous instructions. The first discussion occurred on the workroom floor and the second discussion occurred in an adjoining office because appellant complained loudly and Mr. Robertson did not want to disrupt the office. The third and fourth discussions occurred in the adjoining office in the presence of a union representative. Mr. Hoodack stated that Mr. Robertson was needed as appellant would not allow him to speak. The fourth conversation occurred when appellant returned with a sick leave form but refused to tell Mr. Hoodack why he was leaving. Appellant became agitated and raised his voice during each of the conversations and appeared to be on the verge of losing control of his emotions in the final conversation. Mr. Hoodack felt threatened by appellant and told him he would be forcibly removed from the premises if he continued to act in such manner. Appellant stepped within inches of Mr. Hoodack face and stated, "[I would] like to see you try." At this point, Mr. Robertson asked to speak privately to appellant. Mr. Hoodack denied raising his voice or telling appellant to quit.

Additional evidence was submitted including: a December 1, 2008 schedule change; appellant's grievance about management changing his days off from Saturdays and Sundays off to rotating days off; and medical evidence from Dr. Jacqueline Wilson, a psychiatrist, noting his PTSD symptoms due to work stress. A June 2, 2009 report from Kevin Bernard, a counselor, and a June 15, 2009 letter from the Department of Veterans Affairs noted that appellant had PTSD. Several coworkers provided statements pertaining to allegations of harassment by Mr. Hoodack and perceptions of a hostile work environment at appellant's duty station. A March 4, 2009 Step B grievance decision found that management violated the National Agreement by changing appellant's nonscheduled days to a rotating schedule without documented justification. Appellant was returned to the Saturdays and Sundays off schedule as listed in his December 8, 2007 job offer.

By decision dated December 22, 2009, the Office denied the claim finding that appellant did not establish any compensable employment factors.

On December 30, 2009 appellant requested an oral hearing which was held on April 7, 2010. He testified that he sustained a work injury in January 2005 and underwent cervical surgery in May 2007. Appellant was given a permanent full-time light-duty job offer on December 6, 2007. He alleged Mr. Hoodack tried to change his light-duty job by requiring him to do things, such as deliver parcels, that were against his doctor's restrictions. Mr. Hoodack had appellant ride with him in his private vehicle while Mr. Hoodack delivered parcels. Appellant indicated that Mr. Hoodack had him drive, which was also against doctor's restrictions. He alleged Mr. Hoodack constantly monitored his activities and asserted that he did not get enough work done. Appellant testified that the November 13, 2008 modified job offer violated his restrictions as he required consecutive days off to recuperate from his work injury. He alleged Mr. Hoodack threatened him with discipline if he refused to sign the job offer. Appellant refused to sign the job offer, but subsequently worked the altered schedule and filed a grievance which he won. He contended that Mr. Hoodack engaged in retaliatory harassment after the grievance decision. Appellant's doctor advised that appellant avoid any interaction with Mr. Hoodack, but the employing establishment offered no accommodation. Appellant stated that he was forced from his job from May to his retirement in December because of the environment Mr. Hoodack created.

In a February 13, 2010 statement, Mr. Robertson stated that he had witnessed harassing and intimidating management practices by Mr. Hoodack since he arrived in December 2007. Regarding May 26, 2009, he worked in the area next to appellant and did not hear or was aware of any loud disturbance by appellant. Mr. Robertson was present when appellant gave his sick leave request to Mr. Hoodack and stated that appellant asked Mr. Hoodack to sign the form and did not demand approval, as Mr. Hoodack claimed. He stated that under the Employee Relations Manual, an employee is not required to divulge the nature of an illness. Mr. Robertson stated that Mr. Hoodack, was on the verge of losing control and yelled at appellant to leave the building or be forcibly removed. He also stated that it was Mr. Hoodack, not appellant, who made threats. Mr. Robertson denied that appellant stepped toward Mr. Hoodack and said "[I would] like to see you try."

By decision dated June 8, 2010, an Office hearing representative affirmed the December 22, 2009 decision. The hearing representative found that appellant did not establish any compensable factors pertaining to his allegations involving Mr. Hoodack.²

LEGAL PRECEDENT

To establish a claim that an emotional condition arose 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 the condition; and (3) rationalized medical opinion evidence

² Appellant submitted new evidence on appeal. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. Therefore, the Board is unable to review evidence submitted by appellant on appeal. See 20 C.F.R. § 501.2(c)(1).

establishing that the identified compensable employment factors are causally related to the emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.⁴ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁵

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁶ 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.⁷ 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.⁸

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.⁹ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and

³ *D.L.*, 58 ECAB 217 (2006).

⁴ *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁵ *Id.*

⁶ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁷ See *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Charles E. McAndrews*, 55 ECAB 711 (2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

reliable evidence.¹⁰ The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹¹

ANALYSIS

Appellant attributed his emotional condition to Mr. Hoodack harassing him and creating a hostile work environment. The Board must review whether the alleged incidents and conditions of employment are compensable employment factors under the terms of the Act. Appellant has not attributed his emotional condition to his regular or specially assigned duties as a letter carrier. Therefore, he has not alleged a compensable factor under *Cutler*.¹²

Many of appellant's allegations of harassment relate to changes in his work schedule and the assignment of his duties. He alleged Mr. Hoodack harassed him in his attempt to modify his job offer by changing his scheduled days off from Saturdays and Sundays consecutive weekend days to nonconsecutive rotating days. 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.¹³ The employee must submit evidence that management changed his schedule in error.¹⁴ While appellant refused the job offer, he worked the altered schedule until he won the grievance in the matter which restored him to his previous December 8, 2007 modified job offer. The March 4, 2009 Step B grievance decision found that management violated the national agreement as it changed appellant's days off under the 2007 modified job offer without documented justification. The record establishes that appellant's employing establishment erred in this administrative matter involving his days off. To this extent appellant has established a compensable factor. With regards to his assertion that Mr. Hoodack had him perform duties beyond his restrictions, there is insufficient evidence to show error by the employing establishment in its assignment of work to appellant.

Appellant also alleged Mr. Hoodack harassed and verbally abused him on May 26, 2009. The record indicates that he challenged Mr. Hoodack's authority when he questioned Mr. Hoodack's decision that the customer lists were no longer necessary. While such customer lists may have allowed appellant to provide good service as he asserts, it is the supervisor's discretion to make the determination as to whether or not such lists should be used. Appellant's complaints concerning the manner in which Mr. Hoodack exercised his supervisory discretion

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹¹ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹² *Supra* note 4.

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *L.S.*, 58 ECAB 249 (2006).

are all, as a rule, outside of compensable factors of employment.¹⁵ There is no evidence reflecting that this administrative act constituted error or abuse. Appellant's complaint is analogous to frustration over not being allowed to work in a particular job environment and is therefore not compensable.

In regards to appellant's reaction over Mr. Hoodack's inquiry over what appellant's sickness was when he was presented with the sick leave slip and his subsequently being told to either leave the building or be forcibly removed, is not a compensable work factor when appellant offers no independent evidence that the employing establishment erred or acted abusively in these matters.¹⁶ Mr. Robertson's February 13, 2010 statement supports appellant's allegation that he was not required to divulge the nature of any illness. Even if appellant was not required to divulge the nature of his illness, the circumstances in this case reflect that Mr. Hoodack never granted or denied appellant's request for sick leave as he was told to either leave the building or be removed. This occurred after he told Mr. Hoodack it was none of his business as to what his sickness was. Mr. Hoodack denied acting inappropriately. Appellant has not established a compensable work factor in this regard based on the evidence of record.

Appellant also alleged he was verbally abused on May 26, 2009. The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.¹⁷ The Office hearing representative found, and appellant's own statement reflects, that he was angry regarding Mr. Hoodack's decision to do away with the customer lists and responded by making a provocative statement in telling Mr. Hoodack that "it was clear that he [did not] know anything about delivering mail or about customer service." The Office hearing representative found that the dispute escalated when appellant presented Mr. Hoodack with a sick leave form but refused to tell him why he was leaving. Appellant's own statement reflects he told Mr. Hoodack that it was "none of his business" when he was asked what his sickness was. While Mr. Robertson disputed that appellant raised his voice and Mr. Hoodack denied raising his voice at anytime during the May 26, 2009 conversation, the Office hearing representative found, and the Board agrees, it was likely that Mr. Hoodack raised his voice and threatened to have appellant removed from the building. This was based on his statement that after appellant told Mr. Hoodack that it was none of his business what his sickness was, he had to yell at both of them to "shut up" and "stop it." However, while it was likely that Mr. Hoodack raised his voice and threatened to have appellant removed from the premises, under the circumstances where appellant also raised his voice, this remark does not rise to the level of verbal abuse or otherwise fall within the coverage of the Act. While appellant was angry over Mr. Hoodack's decision to get rid of customer lists and may have felt offended with Mr. Hoodack's inquiry into what his sickness was, the Board finds that

¹⁵ *Donald E. Ewals*, 45 ECAB 111 (1993); see also *David W. Shirey*, 42 ECAB 783 (1991).

¹⁶ *Michael Thomas Plante*, 44 ECAB 510 (1993). See *J.C.*, 58 ECAB 594 (2007) (although the handling of leave requests is generally related to employment, they are administrative functions of the employing establishment and not duties of the employee).

¹⁷ See *David C. Lindsey, Jr.*, 56 ECAB 263 (2005). The mere fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse. *Joe M. Hagedwood*, 56 ECAB 479 (2005).

Mr. Hoodack did not engage in verbal abuse.¹⁸ A claimant's own feeling or perception that a form of criticism or disagreement with a supervisor is unjustified, inconvenient or embarrassing does not give rise to coverage under the Act.¹⁹

The Board further finds that appellant has failed to submit sufficient evidence to establish that Mr. Hoodack otherwise engaged in harassment, as alleged. Appellant's assertions that Mr. Hoodack mistreated him and maintained a hostile workplace from May through his retirement in December are unsubstantiated. He alleged that Mr. Hoodack engaged in retaliatory harassment following the March 4, 2009 grievance decision, that Mr. Hoodack monitored his activities, made derogatory remarks, and harassed him. Appellant further alleged Mr. Hoodack provoked people to quit or transfer by using intentional words and actions. However, he did not submit sufficient evidence to establish his allegations as to time, place, what was stated or of any witnesses to any specific incident.²⁰ As such, the allegations constitute generally stated that assertions of dissatisfaction with a certain superior at work which do not establish his allegations.²¹ While appellant indicated that he had filed several grievances against Mr. Hoodack for his harassing management skills, copies of other grievance findings are not of record. Additionally, the statements from coworkers of record indicate their own allegations of harassment from Mr. Hoodack, which do not pertain to appellant, and, thus, are of insufficient probative value to establish his claim. Appellant has not established a compensable work factor in this respect.

The Board finds that appellant has established a compensable factor of employment with regard to error by the employing establishment in changing his schedule from weekends off to rotating nonconsecutive days off. The Board will set aside the Office's June 8, 2010 decision and remand the case for review of the medical opinion evidence to determine whether a causal relationship exists between the compensable factor of employment and appellant's diagnosed condition.²² After such further development as may be warranted, the Office shall issue an appropriate final decision on appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has established a compensable employment factor. The case will be remanded for consideration of the medical evidence with regards to this factor.

¹⁸ See *V.W.*, 58 ECAB 428 (2007); *Michael A. Deas*, 53 ECAB 208 (2001); *Denis M. Dupor*, 51 ECAB 482 (2000). See also *David C. Lindsey, Jr.*, *supra* note 17 (where a "heated verbal exchange" between the employee and the supervisor occurred, the record indicated that both the employee and the supervisor spoke in tones that allowed others to overhear their conversation; the mere fact that his supervisor raised his voice during the course of the conversation was insufficient to warrant a finding that his actions amounted to verbal abuse).

¹⁹ *Id.*

²⁰ See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

²¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

²² When a claimant has asserted a compensable factor of employment, the Office must base its decision on an analysis of the medical evidence. See *K.W.*, 59 ECAB 271 (2007).

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed as modified and set aside. The case is remanded for further action consistent with this opinion.

Issued: June 8, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board