

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

CHARLES L. MICHAELIS, Appellant

and

**U.S. POSTAL SERVICE, SOUTH JERSEY
PROCESSING & DISTRIBUTION CENTER,
Belmawr, NJ, Employer**

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**Docket No. 05-893
Issued: September 2, 2005**

Appearances:
Charles L. Michaelis, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 3, 2005 appellant filed a timely appeal from a December 7, 2004 merit decision of the Office of Workers' Compensation Programs' hearing representative, finding that he did not sustain an emotional condition while in the performance of duty. 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 established that he sustained an emotional condition while in the performance of duty.

FACTUAL HISTORY

On December 10, 2003 appellant, then a 45-year-old clerk, filed a traumatic injury claim (Form CA-1), alleging that on December 8, 2003 he experienced stress and anxiety as a result of a disciplinary action taken against him. He stopped work on the date of the alleged injury.

By letter dated December 15, 2003, the employing establishment controverted appellant's claim on the grounds that his alleged condition did not arise from his assigned work duties or the requirements imposed upon him by his employment. The employing establishment contended that it neither erred nor acted abusively in handling administrative or personnel matters related to appellant.

In a December 22, 2003 letter, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office advised him to submit additional factual and medical evidence in support of his claim.

Appellant submitted medical reports dated December 11, 2003 from Dr. Steven M. Lowry, his treating family practitioner, who found that his emotional condition was due to the disciplinary action taken against him by the employing establishment on December 8, 2003 and fear of being harmed by a coworker.

Appellant also submitted the December 17, 2003 narrative statement of Dean A. Harrison, his immediate supervisor, who noted that the matter between appellant and a coworker was not work related, but an unfortunate vicious triangle between them and appellant's wife. Mr. Harrison stated that he did not have specific proof of any past incidents but he knew that the coworker had been writing letters over the years complaining about the work habits and character of appellant and his wife. Mr. Harrison noted that it had been alleged that appellant harassed the coworker on November 22, 2003 and this was brought to his attention on December 8, 2003. An investigation was conducted which resulted in a "day in court" being held for appellant. During the proceeding, appellant stated that he had more pressing personal matters to attend than responding to the allegation made against him and that he was going home due to stress. Mr. Harrison noted that appellant's wife subsequently submitted a Form CA-1 and stated that appellant would be out for three weeks and he wished to receive continuation of pay.

A January 2, 2004 report of Dennis Phillips, a psychotherapist, noted a history that appellant was first treated by Dr. David Friel, a Board-certified psychiatrist, on October 29, 2003. Mr. Phillips reported his findings on a November 18, 2003 examination of appellant. He diagnosed recurrent moderate major depressive disorder and generalized anxiety disorder on Axis 1, hypertension and gastrointestinal distress on Axis 3, occupational problems on Axis 4 and a global assessment of functioning (GAF) of 50 on Axis 5. He deferred a diagnosis on Axis 2. Mr. Phillips noted the findings of his December 15, 2003 examination which included emotional and physical symptoms that had increased to the point where appellant's primary care physician had placed him on temporary disability with the stress coming from incidents at work.

In a June 10, 2003 narrative statement, Barbara F. Neill, an employing establishment nurse, reported that about two and one-half years prior appellant was working on the flat sorter machine when an anonymous letter was received by Charles H. Thatcher, a supervisor, contending that appellant was not performing his bid job. Appellant believed Raymond Armstrong sent the letter and it was during this time that appellant's wife was Mr. Armstrong's supervisor. Ms. Neill noted that appellant's flat sorter position was abolished and he now had a bid job in registry, but that he saw Mr. Armstrong walk around during lunch and at breaks.

Ms. Neill stated that this situation caused appellant to suffer from stress and anxiety and to be concerned for his wife since her work area could be observed from Mr. Armstrong's work area.

In a December 17, 2003 narrative statement, Stuart Aronow, a coworker, related that, sometime in the spring of 2003, appellant was assigned to the registry section and during this period he conducted himself in a quiet and an efficient manner. Mr. Aronow stated that, during this time, Mr. Armstrong constantly walked by the registry cage and it appeared to everyone working there that he was checking to see where appellant was located and what he was doing. Mr. Aronow indicated that this made the people working in the cage very nervous because nobody knew what Mr. Armstrong was going to do.

In a December 22, 2003 narrative statement, Dennis Banner, coworker, indicated that when appellant received the registry job "all hell broke loose." Mr. Banner stated that Mr. Armstrong constantly walked by the area and checked it out. Mr. Armstrong would come in to work early and on his days off just to look around. Mr. Banner stated that appellant placed a bid for another job. When Mr. Banner tried to talk to Mr. Armstrong he knew it would not work because he had his mind made up and he did not like appellant.

In a December 12, 2003 narrative statement, Ruthann Flannigan, a coworker, related that Mr. Armstrong did not have a problem with the registry section, but with appellant. She stated that Mr. Armstrong told her that appellant wandered the floor all night and that Mr. Armstrong felt unsafe because appellant had threatened him. She asked her supervisor, John Ballay, to talk to Mr. Armstrong and appellant to see if he could smooth things out.

Ms. Neill's June 4, 2003 narrative statement revealed that Valerie Michaelis was concerned about Mr. Armstrong's comments and letters which she believed were aimed at her and appellant. Ms. Neill noted that this situation caused stress at home and work.

In a December 13, 2003 narrative statement, Robert S. Ferringo, a coworker, noted that on several occasions he witnessed Mr. Armstrong stand by the registry cage glaring at appellant. When he looked at Mr. Armstrong he would walk away. Mr. Ferringo stated that on other occasions Mr. Armstrong would talk to Mike Carollo, a coworker, and focus on appellant who was in the cage. He overheard a conversation in which Mr. Armstrong stated that if he were ever escorted out of the building, there would be five other people going with him and appellant's name was mentioned.

In a December 17, 2003 narrative statement, Robert Vukicevich, a coworker, described the registry work area and stated that, if someone walked by the area the workers would notice that person. He stated that, since appellant began training in the registry section, Mr. Armstrong would constantly appear. Sometimes he would just walk by while other times he would stare at appellant or make a passing comment. Mr. Vukicevich thought this was unusual as Mr. Armstrong's job was at the opposite end of the building. He noted that after one week it became noticeable that it was no coincidence that Mr. Armstrong was passing by the registry area because, when appellant was not around, he did not see Mr. Armstrong. He indicated that, when appellant placed a bid to get out of the registry section, Mr. Armstrong was not seen except for rare occasions.

In a January 1, 2004 letter, Barbara L. Johnson, a coworker, stated that she had no knowledge of anyone making “wolf whistle” sounds on November 25, 2003.

By decision dated January 28, 2004, the Office denied appellant’s claim. The Office noted that, although he submitted the statements of coworkers, appellant did not submit a statement in which he described with specificity how he was harassed or improperly disciplined.

Following the issuance of the January 28, 2004 decision, appellant submitted a January 6, 2002 narrative statement. He alleged that on January 5, 2002 he was informed by a coworker that Mr. Armstrong had written a letter to management about him. Appellant stated that he did not have to defend his work to a level five clerk and that he did not demonstrate any animosity towards Mr. Armstrong when he came to work. He noted that on December 9, 2001 Mr. Armstrong looked directly at him in a rage and stated that “I will watch you and what you do. I will watch where you go on breaks and where you park your car. Even personally outside of work till the day you die.” Appellant alleged that Mr. Armstrong made it clear that he had his social security number and he could destroy him personally. Appellant related that the situation caused him to constantly look over his back, to feel stressed and fear for his safety both professionally and personally. He noted that the situation had a profound effect on his work performance. He believed that Mr. Armstrong was stalking him and that he was not aware of what he was capable of doing. Appellant expressed concern for the safety of his son, who also worked at the employing establishment and lived with him.

On February 5, 2004 appellant requested an oral hearing before an Office hearing representative. He submitted Dr. Lowry’s February 11, 2004 duty status report which reiterated his findings. Appellant also submitted a copy of an April 30, 2003 email message from Mr. Armstrong to Supervisor Thatcher. He complained about not being able to perform the relief portion of his bid job while others were allowed to do so with permission from Tour 3 distribution operations, such as Mrs. Michaelis. He expressed a problem with “an employee” being allowed to roam the building at will and unsupervised and that he had been assaulted by “this individual” when he pushed past him from behind. Mr. Armstrong noted that he reported this incident to Anthony J. Meraviglia, the supervisor of appellant’s wife, but nothing was done. He stated that, if appellant was allowed to continue roaming the building unsupervised Mr. Armstrong would hold management responsible for appellant’s actions and he would take appropriate action to defend himself. Mr. Armstrong questioned when the employing establishment was going to do something about Mrs. Michaelis, who was allegedly coming to work with alcohol on her breath and impersonating a supervisor. He noted that during the past months he received numerous reports from clerks, mail handlers and even supervisors about the smell of alcohol on her breath. Mr. Armstrong further noted that Mrs. Michaelis was not responsible for herself and, therefore, could not be responsible for other employees. He stated that she had more than enough time to seek help and she had chosen not to do so. Mr. Armstrong requested that management take decisive action to protect the safety and well-being of its employees.

In a report dated February 18, 2004, Dr. Lowry stated that appellant experienced dyspepsia and nausea was secondary to stress disorder.

Mr. Phillips' February 17, 2004 report revealed that appellant continued to experience anxiety, physical symptoms of nausea and vomiting in the morning, distressing dreams, racing thoughts and overall sleep disturbance. He stated that appellant presented a picture of harassment in the workplace by a specific individual which led to emotional and physical distress.

In a statement dated January 4, 2002, appellant indicated that at 2150 hours he was on break from his clerk position when he went to the platform office to speak to his wife. He stated that, as he was heading towards the door with his arm extended to push the door, Mr. Armstrong deliberately stepped in front of him. Appellant's arm touched Mr. Armstrong's back as he pushed the door open and appellant stated excuse me to Mr. Armstrong. Appellant indicated that he exited the door and went to see his wife. Due to the nature of Mr. Armstrong's working relationship with his wife, appellant felt that he should immediately report the incident to his manager of distribution operations.

In a January 4, 2001 statement, Mr. Armstrong indicated that on Friday at 2120 hours, he was entering the platform office through the door when appellant, who was behind him, pushed him with enough force to cause him to stumble. Mr. Armstrong questioned him about the incident and appellant responded that he did not see him.

Mr. Meraviglia stated in a January 4, 2002 letter that, at approximately 2125 hours, Mr. Armstrong reported that he was pushed by appellant while he was entering the platform office from the direction of the inner building. He noted that statements were obtained from both parties and no bodily injuries were sustained or reported. According to appellant, Mr. Meraviglia reported that Mr. Armstrong was entering the same walk space and that he touched Mr. Armstrong on his back. Appellant reported that the contact was incidental in nature and he excused himself by stating that he did not see Mr. Armstrong cut in front of him. Mr. Meraviglia noted that he would investigate the matter.

At a hearing held on September 29, 2004, appellant testified that the problems with Mr. Armstrong began after he started writing letters to management officials about his wife, who was Mr. Armstrong's supervisor. This went on for several years, after which Mr. Armstrong started to write letters contending that appellant roamed the workroom floor freely, that appellant came into Mr. Armstrong's work area, which was untrue and that his training for the registry job lasted too long. Appellant bided out of the registry job because his coworkers were uncomfortable with Mr. Armstrong coming by their work area during his breaks and at lunchtime. He noted that his coworkers saw Mr. Armstrong glaring at him. Appellant stated that Mr. Armstrong would watch him when he went out onto the platform to receive registered mail. He denied Mr. Armstrong's allegation that he "wolf whistled" at him, which was the subject of the "day in court" investigation. Appellant testified that, at the time the alleged comment was made, he was working in his designated area and he did not remember seeing Mr. Armstrong in the area.

Appellant also testified that the only physical confrontation he had with Mr. Armstrong was when he put his hand on Mr. Armstrong's back. Appellant noted that the December 8, 2003 investigation caused him to have a panic attack because false allegations had been made against him and he believed that Mr. Harrison was taking Mr. Armstrong's side.

By decision dated December 7, 2004, an Office hearing representative affirmed the January 28, 2004 decision. The hearing representative found that appellant failed to establish that his emotional condition was caused by a compensable factor of his federal employment.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.¹ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

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*,³ 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.⁴ 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.⁵ 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.⁶ 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.

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

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3.

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

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.⁸

Where the disability results from an employee's emotional reaction to his or her 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.⁹ 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.¹⁰ 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.¹¹

ANALYSIS

Appellant attributed his emotional condition to harassment by Mr. Armstrong. He contended that Mr. Armstrong wrote letters to management officials regarding the work of himself and his wife. Appellant contended that during lunch hour and breaks Mr. Armstrong came by his work area and glared at him, noting that his coworkers witnessed Mr. Armstrong's actions. He alleged that on December 9, 2001 Mr. Armstrong threatened to cause him physical and financial harm. Appellant noted that Mr. Armstrong deliberately stepped in front of him as he was trying to push open a door as he was going to visit his wife. He believed Mr. Armstrong was stalking him and became concerned for the safety of his wife and son who worked at the employing establishment.

If harassment and discrimination is shown to have occurred, it would be considered a compensable factor of employment. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.¹²

The witness statements of Mr. Banner, Mr. Ferringo, Mr. Aronow and Mr. Vukicevich indicated that Mr. Armstrong walked by the registry cage where appellant worked and glared at him. However, no specific details were provided such as dates, times or an explanation as to

⁸ *Id.*

⁹ *Lillian Cutler*, *supra* note 3.

¹⁰ *Michael L. Malone*, 46 ECAB 957 (1995).

¹¹ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

¹² *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).

Mr. Armstrong's activities. Mr. Ferringo indicated that he overheard Mr. Armstrong stating that, if he were ever escorted out of the building, he would take other coworkers, including appellant, along with him. The context in which this statement was made was not further explained. Therefore, these witness statements are of limited probative value and are insufficient to establish that appellant was harassed by Mr. Armstrong.

Ms. Neill reported appellant's account of being watched by Mr. Armstrong and of concern for his wife's safety at the employing establishment. She also reported Mrs. Michaelis' concern about comments and letters concerning her and appellant generated by Mr. Armstrong. Ms. Neill, however, did not personally witness Mr. Armstrong harass appellant. She merely provided an account of the alleged harassment as related to her by appellant and his wife. The Board finds that Ms. Neill's statement is insufficient to establish that appellant was harassed by Mr. Armstrong.

The Board notes that appellant has not attributed his emotional condition to his assigned work duties or the requirements imposed upon him by factors of his employment. Mr. Armstrong alleged that appellant had assaulted him when appellant pushed past him from behind. He reported the incident to Mr. Meraviglia, but no action was taken. In response, Mr. Armstrong sent an email to management. Ms. Flannigan indicated that Mr. Armstrong told her that he was being harassed by appellant which made him feel unsafe. She noted asking her supervisor, Mr. Ballay, to speak with Mr. Armstrong and appellant.

The Board finds that appellant has failed to submit sufficient evidence to establish that he was harassed by Mr. Armstrong. He has failed to establish a compensable factor of employment in this regard.¹³

Appellant also attributed his emotional condition to being disciplined by the employing establishment on December 8, 2003 when a "day in court" was held regarding Mr. Armstrong's allegation that appellant had "wolf whistled" at him. Appellant stated before the hearing representative that this meeting caused him to have a panic attack because false allegations were made against him and he believed that Mr. Harrison, his immediate supervisor, favored Mr. Armstrong's position. An investigation is generally related to the performance of an administrative function of the employer and not to the employee's regular or specially assigned work duties.¹⁴ As noted above, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not generally fall within coverage of the Act absent evidence of error or abuse. Appellant, however, did not submit sufficient evidence to establish that the employing establishment committed error or abuse in investigating Mr. Armstrong's allegations. The employing establishment denied any error or abuse in handling the December 8, 2003 meeting. Mr. Harrison stated that the matter involving appellant, his wife and Mr. Armstrong was not work related. He noted that the meeting was held after Mr. Armstrong alleged that appellant "wolf whistled" at him. Appellant has not submitted any evidence establishing that the employing establishment committed error or abuse in investigating Mr. Armstrong's allegation. Ms. Johnson denied having knowledge of

¹³ *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

¹⁴ *Ernest St. Pierre*, 51 ECAB 623, 624 (2000).

anyone making “wolf whistle” sounds on November 25, 2003. Therefore, the Board finds that her statement is not relevant to the issue whether the employing establishment committed error or abuse in its investigation of Mr. Armstrong’s allegation that appellant “wolf whistled” at him.

The employing establishment’s investigation of the alleged pushing incident did not result in a finding that either appellant or Mr. Armstrong both acted inappropriately. Mr. Meraviglia obtained statements from appellant and Mr. Armstrong and noted that no injuries were sustained or reported. He reported that the contact between appellant and Mr. Armstrong was incidental in nature and that appellant apologized for his actions. Although Mr. Meraviglia indicated that he would investigate the incident and reach a conclusion that was agreeable by both parties, the record does not contain any final resolution of this matter.

Without substantiated evidence of error or abuse on the part of the employing establishment in handling the investigations of Mr. Armstrong’s allegations, appellant has failed to establish a compensable factor of employment under the Act.

CONCLUSION

The Board finds that, as appellant has not identified any compensable employment factors, he has failed to establish that he sustained an emotional condition while in the performance of duty.¹⁵

¹⁵ 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).

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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