

**M.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Irving, TX, Employer**

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### Case Submitted on the Record

Before:  
 RICHARD J. DASCHBACH, Chief Judge  
 COLLEEN DUFFY KIKO, Judge  
 JAMES A. HAYNES, Alternate Judge

On June 4, 2010 appellant, through his attorney, filed a timely appeal from an April 29, 2010 merit decision of the Office of Workers' Compensation Programs denying his emotional condition claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant sustained an emotional condition in the performance of duty.

On February 17, 2009 appellant, then a 45-year-old customer service supervisor, filed an occupational disease claim alleging that he sustained depression and anxiety due to factors of his federal employment. He stopped work on February 29, 2009.

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

In an accompanying February 9, 2009 statement, appellant related that a subordinate, Henry Mayfield, accused him of inappropriately touching him on August 15, 2008. On January 9, 2009 a police detective told appellant that the incident was under investigation. When appellant visited another work location on January 12, 2009, two employees questioned him about the incident. On January 16, 2009 the employing establishment transferred him to another location. Appellant overheard city carriers asking if he was “gay.” He related that on January 22, 2009 he was talking to a city carrier when he “felt my emotions becoming angered towards him. I could not focus & concentrate on my daily tasks as a supervisor.” Appellant sought medical attention.

In a January 9, 2009 police incident report, Mr. Mayfield alleged that on either August 15 or 16, 2008, his supervisor grabbed his crotch and told him that he was his “altar-boy.” He related that he waited to file the report because he tried to complain through the employing establishment. The police officer spoke with appellant, who told him that Mr. Mayfield had filed numerous false complaints at work. Appellant denied touching him.

In a summary decision dated February 10, 2009, the Equal Employment Opportunity (EEO) Commission denied Mr. Mayfield’s complaint that appellant discriminated against him by denying his request for 144 hours of annual leave. In the decision, it noted that Mr. Mayfield alleged that coworkers got annual leave over the holidays because they gave appellant sexual favors. The EEO Commission found that Mr. Mayfield did not prove that the employing establishment’s denial of his leave request was discriminatory and that he had not shown any evidence that Mr. Cooper wanted sexual favors.

By letter dated February 26, 2009, the Office requested that the employing establishment respond to appellant’s allegations. It specifically asked that a knowledgeable supervisor address the accuracy of the statements and discuss whether it disagreed with the allegations.

In response to the Office’s request for additional information, on March 16, 2009, appellant related that he had sufficient job training to do his job but needed a second computer to adequately perform his duties. He worked overtime occasionally. Appellant was waiting for a copy of the investigative report from management. He asserted that transferring him to another workstation “without a thorough and impartial investigation created a perception that I was guilty. This triggered my emotions, anger and thoughts of worthlessness. This whole situation has created a hostile, intimidating and abusive work environment.”

In a statement dated March 16, 2009, appellant related that on January 9, 2009 a police detective informed him that Mr. Mayfield had filed an incident report alleging that on August 15, 2008 appellant grabbed his genitals, groped him and tried to kiss him.<sup>2</sup> He was “angered and devastated” about the allegation. On January 12, 2009 appellant traveled downtown to talk with union representatives about the accusation. Coworkers questioned appellant about the incident. On January 16, 2009 a manager transferred him to a new work location effective the following day. Appellant protested the transfer because he believed that it made him appear guilty. When he arrived at the new station on January 17, 2009, employees discussed Mr. Mayfield’s allegation and wondered aloud whether appellant was homosexual. Appellant asked the

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<sup>2</sup> Appellant also submitted medical evidence in support of his contentions.

employing establishment for a copy of the investigation report without success. He sought medical treatment after he became unreasonably angry on January 29, 2009 talking with a city carrier about route instructions. On February 25, 2009 appellant learned from reading EEO materials that Mr. Mayfield had previously accused him of additional sexual misconduct. He denied touching Mr. Mayfield and stated, "I have not been treated as a person who is innocent. I have been treated as guilty and have not received the documentation needed to address the alleged offense."

On March 20, 2009 appellant noted that he had filed an EEO complaint. He asserted that he was not at work on the date of the alleged incident but instead was out of town at a football scrimmage. Appellant maintained that the employing establishment did not properly investigate Mr. Mayfield's accusation and stated, "The [employing establishment] just found out March 17, 2009 that I was not at work." He submitted his time and attendance sheet supporting his contention.

In a March 24, 2009 decision, the employing establishment determined that the investigation into the allegation of sexual harassment by appellant was inconclusive as there were no witnesses. It noted that Mr. Mayfield alleged that one incident occurred in the first week on August 2008 and the second incident occurred on either August 16 or 17, 2008. The employing establishment indicated that appellant was not at work from August 15 to 17, 2008.

On March 30, 2009 appellant formally requested legal representation by the Department of Justice. He related that he was falsely accused of assault by Mr. Mayfield on August 15 or 16, 2008 while delivering mail. Appellant noted that he was not at work on either day but was out of town working at a football scrimmage and provided the name of three individuals who could verify his whereabouts. He indicated that Mr. Mayfield had filed 36 EEO complaints in his 10 years working with the employing establishment.

By decision dated April 14, 2009, the Office denied appellant's claim after finding that he did not establish an emotional condition in the performance of duty. It found that he had not alleged any compensable work factors.

On April 29, 2009 appellant requested reconsideration. He maintained that management could have swiftly verified that he was out of town at the time of the alleged incident by checking time and attendance records. Appellant alleged that being transferred to another location created a "perception of guilt."

In a March 17, 2009 interview, appellant related that he did not go out on a route with Mr. Mayfield in August 2008. He indicated that Mr. Mayfield had filed prior EEO claims alleging "various sexual things in the past." Appellant noted that he had been charged with assault by the state while in the scope of his federal employment. He maintained that management was aware that Mr. Mayfield had repeatedly filed EEO complaints accusing him of sexual harassment. Appellant stated, "The USPS Management has created a hostile, intimidating and abusive work environment for me by not providing a prompt, thorough and impartial investigation of a Sexual Harassment complaint in a timely manner."

By decision dated September 18, 2009, the Office denied modification of its April 14, 2009 decision.

On April 8, 2010 appellant, through his attorney, requested reconsideration. Counsel argued that after appellant's transfer he became afraid of "losing his job because of his inability to do his supervisory duties due to his fear that if he gave an order to a subordinate who didn't like it, a similar incident might occur." He maintained that appellant's emotional condition thus arose from the performance of his work duties.

By decision dated April 29, 2010, the Office denied modification of its September 18, 2009 decision.

On appeal appellant's attorney contends that appellant sustained an emotional reaction to his assigned supervisory duties from January 17 to 29, 2009. After being falsely accused by a subordinate of sexual harassment, appellant was reassigned to a position that required him to supervise and make decisions that his subordinates might not like. He experienced fear of job loss because he felt unable to perform his supervisory duties.<sup>3</sup>

### **LEGAL PRECEDENT**

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> In determining whether the employing establishment has erred or acted abusively, the Board will

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<sup>3</sup> Counsel cited a March 31, 2010 medical report as support for his allegations. The record does not contain a copy of the March 31, 2010 medical report.

<sup>4</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

<sup>7</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>8</sup>

Office regulations provide that an employer who has reason to disagree with an aspect of the claimant's report shall submit a statement to the Office that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support that position.<sup>9</sup> The applicable regulations further provide that the employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.<sup>10</sup> If the employer does not submit a written explanation to support its disagreement, the Office may accept the claimant's report of injury as established.<sup>11</sup>

### ANALYSIS

Appellant primarily attributed his emotional condition to the employing establishment's investigation into an allegation by a subordinate that he sexually assaulted the employee and his transfer to a new work location as a result of the accusation. He maintained that following his transfer subordinates questioned his sexuality and made it difficult for him to perform his work duties. On January 9, 2009 the subordinate, Mr. Mayfield, informed the police that on August 15 or 16, 2008 appellant inappropriately touched him at work. The police questioned appellant about the alleged incident on January 9, 2009. On January 16, 2009 the employer transferred him to a new work location. Appellant protested the transfer as he believed that it made him appear guilty. He further noted that it was subsequently established that he was not at work on either August 15 or 16, 2008. Appellant maintained that the employer should have made a more thorough investigation of the alleged incident prior to transferring him, especially given Mr. Mayfield's history of filing numerous EEO complaints. He noted that if it had properly investigated the allegation it would have learned that he was not at work when the alleged sexual touching occurred. Appellant also maintained that he unsuccessfully attempted to obtain information regarding the investigation from the employing establishment. Following the transfer, subordinates questioned his sexuality.

Investigations and transfers are considered to be an administrative function of the employer when they are not related to an employee's day-to-day duties or specially assigned duties or to a requirement of the employee's employment.<sup>12</sup> While as a general rule an employee's reaction to administrative or personnel actions taken by the employing establishment is not covered, an administrative or personnel action will be considered to be employment related where the evidence discloses error or abuse on the part of the employing establishment.<sup>13</sup>

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<sup>8</sup> *M.D.*, 59 ECAB 211 (2007); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> 20 C.F.R. § 10.117(a).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 10.117(b); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.4(d)(1) (October 1995).

<sup>12</sup> *J.F.*, 59 ECAB 331 (2008); *Thomas O. Potts*, 53 ECAB 353 (2002).

<sup>13</sup> *James E. Norris*, 52 ECAB 93 (2001).

Additionally, harassment and discrimination or a hostile work environment may, if established as occurring and arising from the performance of work duties, constitute compensable work factors.<sup>14</sup>

Appellant submitted a detailed statement identifying the factors of employment that resulted in his emotional condition. The Office undertook further development of this issue by requesting information from the employing establishment by letter dated February 26, 2009. The employing establishment submitted only a March 24, 2009 sexual harassment fact-finding decision indicating that its investigation into the allegation of sexual misconduct by appellant was inconclusive. The decision noted that Mr. Mayfield alleged that one incident occurred the beginning of August 2008 and the second incident on either August 16 or 17, 2008 but that appellant was not at work from August 15 to 17, 2008 and Mr. Mayfield was not at work on August 17, 2008. The employing establishment did not, as requested by the Office, provide a statement from a supervisor responding to appellant's allegations or address whether it agreed or disagreed with the contentions raised. It also did not specifically respond to his allegation that he was inappropriately investigated or transferred and did not explain why its investigation into the accusation of sexual misconduct by appellant was inconclusive given his absence from work on most of the days of the alleged misconduct. As discussed, Office regulations provide that an employer who has reason to disagree with an aspect of the claimant's report shall submit a statement to the Office that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support that position.<sup>15</sup> If the employer does not submit a written explanation to support its disagreement, the Office may accept the claimant's report of injury as established.<sup>16</sup> The case will, consequently, be remanded to the Office to request that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant relative to his claim. If the employing establishment does not respond to the Office's request, it may accept appellant's allegations as factual in accordance with its regulations.<sup>17</sup>

Counsel contended that appellant experienced stress because of difficulty supervising employees subsequent to his transfer. Appellant asserted that on January 12, 2009 two employees questioned him about his sexual orientation and, on January 16, 2009, city carriers spoke about whether he was gay. On January 22, 2009 he experienced anger while giving instructions to a carrier and became unable to concentrate on his supervisory duties. There is no dispute that, as a supervisor, appellant was responsible for giving instructions to subordinates. Under *Cutler*, where a claimed disability results from an employee's reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes within coverage of the Act.<sup>18</sup> Appellant experienced stress performing his duties as a supervisor in instructing subordinate employees. He has established a compensable work factor. Following

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<sup>14</sup> *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>15</sup> *Supra* note 9.

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *See Alice F. Harrell*, 53 ECAB 713 (2002).

<sup>18</sup> *See also Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

the Office's further development of the factual evidence regarding his remaining allegations, it should develop whether the medical evidence establishes that he sustained an emotional condition arising from the compensable work factor.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 29, 2010 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 8, 2011  
Washington, DC



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



Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board



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