

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. WARD and U.S. POSTAL SERVICE,
POST OFFICE, Washington, D.C.

*Docket No. 97-1014; Submitted on the Record;
Issued December 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

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

On September 27, 1995 appellant filed a traumatic injury claim alleging that he sustained "traumatic stress" which he attributed to his federal employment.¹ By decision dated December 12, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an injury in the performance of duty. In a decision dated October 30, 1996, an Office hearing representative affirmed the Office's December 12, 1995 decision. The hearing representative found that appellant did not allege any compensable factors of employment.

The Board has duly reviewed the case record and finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Federal Employees' Compensation Act² does not cover every injury or illness that is somehow related to one's employment. When the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. The disability is not compensable, however, when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. If an employee is unhappy doing inside work, desires a different job, broods over the employing establishment's failure to give him the kind of

¹ The Office of Workers' Compensation Programs adjudicated appellant's claim as an occupational disease claim as he included incidents occurring over more than one day as contributing to his condition.

² 5 U.S.C. §§ 8101-8193.

work he desires, and he becomes emotionally disturbed as a result, this does not establish “a personal injury sustained while in the performance of his duty” within the meaning of the Act.³

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.⁴ 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁵

Appellant primarily attributed his emotional condition to receiving a letter of warning in September 1995. The record indicates that appellant received a letter of warning dated September 17, 1995 based on his failure to meet the employing establishment’s attendance requirements. Appellant argued that as the employing establishment ultimately approved his leave requests, he should not have received a letter of warning. It is well established that matters involving the use of leave or disciplinary actions are administrative functions of the employer rather than duties of the employee.⁶ Where the evidence demonstrates that the employing establishment has neither erred or acted abusively in the administration of personnel matters, coverage will not be afforded.⁷ A December 6, 1995 statement from an employing establishment official indicated that the issuance of the letter of warning was proper as appellant had a “chronic attendance problem.” Appellant has not submitted any probative evidence establishing error or abuse by the employing establishment in issuing the letter of warning, and thus has not established a compensable factor of employment.⁸

Appellant also attributed stress to actions taken by management at the employing establishment which he characterized as harassment. Appellant related that in December 1994 his supervisor initially listed him as absent without leave and that at various times his supervisor did not allow him to see his shop steward, placed him in a room with people with disabilities and changed his time and pay location. To the extent that appellant alleges that the actions of his supervisors constituted “harassment,” the Board has held a claimant must establish a factual

³ *Lillian Cutler*, 28 ECAB 125, 131 (1976); 5 U.S.C. § 8102(a).

⁴ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ *Id.*

⁶ *Barbara J. Nicholson*, 43 ECAB 803 (1994); *Diane C. Bernard*, 45 ECAB 223 (1993).

⁷ *See Sharon R. Bowman*, 45 ECAB 187, 194 (1993).

⁸ At the hearing, appellant stated that he had filed a grievance regarding the September 1995 letter of warning but that he had not received a decision.

basis for the claim by supporting the allegations with probative and reliable evidence.⁹ Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁰ Appellant has not submitted any evidence in support of his allegations of harassment and thus he has not established a compensable factor of employment.

As appellant has not established any compensable factor of employment, the Office properly rejected his claim for compensation.¹¹

The decision of the Office of Workers' Compensation Programs dated October 30, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 7, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁹ *Barbara J. Nicholson*, *supra* note 6.

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

¹¹ Since appellant has not established any compensable factors of employment, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 4.