U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNY CHENG and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

Docket No. 96-1004; Submitted on the Record;
Issued January 28, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met his burden of proof to establish his claim for an emotional condition in the performance of duty.

The Board has duly reviewed the record and finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty.

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 her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of losing one's job or frustration from not being permitted to work in a particular environment or to hold a particular position.[2] Generally, the only factors of employment which will bring a claim within the scope of the Act are those that relate to the duties the employee was hired to perform.[3] Actions of the employing establishment in administrative or personnel matters however, do not generally fall within coverage of the Act, unless the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters.[4]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *See Merriett J. Kauffman*, 45 ECAB 696 (1994).

[4] *See Elizabeth W. Ensil*, 46 ECAB ____ (Docket No. 93-1592, issued March 16, 1995) (finding that the assignment of work duties and the assessment of work performance while generally related to the employment are

Appellant, a 27-year-old letter carrier, filed a claim on May 25, 1994 for emotional stress, following an altercation with a supervisor on May 14, 1994. Appellant reported that he felt he had provided sufficient notice and arrived early enough, to leave on May 14, 1994 at his scheduled 3:30 p.m. time, but was required by the supervisor to finish his route, which took 15 to 20 minutes more. He described a lack of flexibility on the part of the supervisor, and felt that he was treated differently than his coworkers. Appellant stated that when his supervisor demanded that he finish his route, he asked for an explanation of why another coworker was allowed off work for his scheduled appointment, but he was given no explanation. He went to his vehicle outside to use the cellular phone to call the union representative, and after his call, he was lying in his car with his door open. The supervisor came out and placed his hand on his shoulder, and appellant became angry. Appellant then threatened the supervisor, that he would get a gun and kill the supervisor. Appellant submitted a statement from his union representative, who came to the parking lot and witnessed the verbal altercation between appellant and the supervisor, but did not indicate specifically that she heard the threat appellant made.

Following the May 14, 1994 incident appellant was placed on emergency suspension. He obtained medical care on May 19, 1994 for complaints of chest pain and was advised to remain off work until May 23, 1994. Upon his return to work, he received a 14-day suspension, for which he filed a grievance.

In a June 10, 1994 statement, appellant's supervisor discussed the incident on May 14, 1994 and noted prior disciplinary action taken against appellant for failure to finish an assignment as directed and failure to maintain a regular schedule/absenteeism.

During a meeting held on June 24, 1994, pursuant to the grievance appellant had filed, appellant became visibly upset. Another supervisor, who completed a separate claim form on behalf of appellant on that date, drove appellant to a local hospital, where he was examined by Dr. Tiah Foster, a Board-certified psychiatrist. Based on Dr. Foster's recommendation, appellant was hospitalized for one week. The records contain the discharge report by Dr. Colin Fox, a Board-certified psychiatrist, who diagnosed adjustment disorder with depression and noted appellant's frustration with a prior Equal Employment Opportunity (EEO) complaint that he had filed and his general perception of disparate treatment on the basis of his Chinese national origin.

Appellant continued treatment under the care of Dr. G. Demetrius Karalis, a psychiatrist, who reported that he considered the threat appellant made to his supervisor as a response to appellant's perception of imminent physical harm when his supervisor pushed on his shoulder.

After being off work since June 24, 1994, appellant returned to work in September 1994. He filed an EEO complaint alleging age and race discrimination.[5] In his EEO complaint,

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administrative functions of the employer, and not duties of the employee); *See also, James W. Griffin*, 45 ECAB 774 (1994) (with respect to reassignments and the denial of work requests); *Margreate Lublin*, 44 ECAB 945 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

[5] In January 1995 appellant was issued further disciplinary action for irregular attendance, including frequent tardiness.

appellant cited to prior disciplinary action taken against him in December 1993. He noted that he called several people during his shift on November 20, 1993 because he feared that he would not complete his assignment on time and knew that overtime work required approval. Appellant noted his frustration about not being allowed to talk to the union representative about his EEO claim while he was on official time. He stated that while the letter of warning he received was rescinded he was unhappy with the Postmaster's lack of acknowledgment of the disrespect he felt had been shown to him. Appellant addressed the incident on May 14, 1994 between appellant and his supervisor, and two prior incidents which gave rise to disciplinary action against appellant.

At a hearing held on May 18, 1995 appellant testified that he stopped work again beginning in April 1995 on the advice of Dr. Karalis. He testified that he felt discriminated against because he was Chinese and addressed the circumstances surrounding both the incident in November 1993 and the incident on May 14, 1994. Appellant testified that he felt the supervisor was about to "jump on" him again in the parking lot, and that he was scared. He testified he did not own a gun. He also testified that by saying he felt the supervisor was going to "jump on" him meant that he felt he was going to be harassed again as before.

After the hearing, appellant submitted disability notes from Dr. Karalis, who recommended total disability from April 11 until May 3, 1995. He also submitted copies of the documents submitted as part of his EEO claim which had been denied. The documents submitted with the EEO claim included a statement from appellant's supervisor dated March 3, 1995, in which appellant's supervisor indicated that he had approved appellant's request to come early on May 14, 1995, and that in assigning routes to appellant on that date, he felt that he was providing appellant with a route which was within the time period for appellant to complete prior to leaving that day. He noted that appellant had been unable to finish the route however, and that while he estimated the amount of work remaining to be less than 15 minutes and appellant estimated it to be 20 more minutes. The supervisor noted that appellant had voluntarily been placed on the overtime list, and that he needed appellant to finish the route. He explained that the person who was able to leave early that day had requested the early departure two days in advance, as opposed to appellant's request made the prior day, and explained that he saw appellant lying in his car from the window and went out to make sure appellant was not in need of medical attention.[6]

By decision dated September 21, 1995, the Office hearing representative found that appellant had not established his claim for an emotional condition due to the May 14, 1994 incident and the disciplinary action which followed.

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur.[7] In this case,

[6] The EEO documents also contain evidence of disciplinary action taken against other employees, submitted by appellant to pattern of action taken against employees of a different national origin. The documents also contained the letters of disciplinary action taken against appellant on December 8, 1993 and on June 10, 1994.

[7] *Anna C. Leanza*, 48 ECAB ___ (Docket No. 95-2598, issued October 1, 1996); *Curtis Hall*, 45 ECAB 316 (1994).

appellant has submitted no evidence to support that he was discriminated against by the failure of his supervisor to allow him to leave at 3:30 p.m. on May 14, 1994, or by the actions taken in December 1993 following his multiple telephone calls to make certain what his job duties were on a specific date in November 1993. The only statement he submitted to support his claim for an emotional condition due to employing establishment actions he felt were unfair, included the statement by the union representative present when he was confronting his supervisor in the parking lot on May 14, 1994. The union representative's statement does not support his claim that his supervisor was abusive at that time. Nor does the evidence establish error or abuse by the actions taken against appellant in June 1994 for threatening his supervisor, or error or abuse with respect to the prior letter of warning issued in December 1993 and rescinded as part of a grievance process.[8] While appellant felt unfairly treated and was frustrated with the lack of acknowledgment of this mistreatment by management, he has not submitted any evidence to establish error or abuse with respect to the actions of his supervisors, to give rise to a compensable employment injury.[9]

[8] The mere fact that the employing establishment lessens or reduces a disciplinary action or sanction does not establish error or abuse with respect to the action; *see Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[9] When an employee has asserted a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the medical evidence is then reviewed to determine whether the employee sustained an injury due to the compensable work factor; *see Gregory J. Meisenberg*, 44 ECAB 527 (1993).

The decision of the Office of Workers' Compensation Programs dated September 21, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 28, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member