

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EFRAIN CORDERO and U.S. POSTAL SERVICE,
POST OFFICE, Arecibo, P.R.

*Docket No. 97-1983; Submitted on the Record;
Issued April 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On August 1, 1996 appellant filed an occupational disease claim for major depression which he attributed to factors of his federal employment. By decision dated February 13, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish an injury in the performance of duty.

The Board has duly reviewed the case record and finds that the case is not in posture for a decision.

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 the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.²

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

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the 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.⁶

In a statement dated November 27, 1996, appellant, through his attorney, attributed his depression to the employing establishment's denial of his February 1991 request for a transfer due to health problems. Although the assignment of work duties is generally related to employment, it is an administrative function of the employer and not a duty of the employee. Denial of a job transfer is not compensable, absent evidence of error or abuse on behalf of the employing establishment.⁷ Appellant stated that he filed a grievance due to the denial of the transfer which was settled in March 1991. The settlement agreement provided that appellant would "report to work within his limitations as instructed by management." The settlement agreement does not support a finding of error or abuse by the employing establishment in denying appellant's request for a transfer and thus he has not established a compensable factor of employment.

Appellant further attributed his emotional condition to harassment by Ms. Neida Oliveras, the postmaster. With regard to allegations of harassment by the postmaster, the Board notes that to the extent that disputes and incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁸ However, for harassment to give rise to a compensation factor of employment, there must be evidence that the implicated acts did, in fact, occur as alleged. Mere perceptions of harassment are not compensation under the Act.⁹ In the

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

⁷ *Michael Thomas Plante*, 44 ECAB 510 (1993).

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

⁹ *Ruth C. Borden*, 43 ECAB 146 (1991).

instant case, appellant indicated that the postmaster insulted him and issued reprisals against him in the presence of his coworkers. In a statement dated October 31, 1996, Mr. Ramos, a shop steward at the employing establishment, generally stated that the postmaster Ms. Oliveras harassed appellant but did not refer to any specific incidents that would substantiate appellant's allegation of harassment.¹⁰ As appellant has not submitted any factual evidence supporting particular instances of harassment by Ms. Oliveras, he has not established a compensable employment factor.

Further, appellant alleged that the volume of his work increased beginning in 1982 when he became a foot carrier. Appellant related that he requested help on his route but that the employing establishment denied his request. Overwork can be a compensable factor of employment if substantiated by the record since it relates to assigned work duties.¹¹ In the instant case, appellant submitted some evidence in support of his claim of overwork. Mr. Ramos, in his October 31, 1996 statement, related that appellant complained about "excessive parcels on [his] route" and that "[o]nly on very few occasions would he receive assistance." Mr. Ramos further indicated that, because of appellant's back condition, he had difficulty completing his route within eight hours and stated, "Constantly, every day he had to exert himself to work overtime completing his route."¹²

While appellant has the burden of proof to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹³ In the instant case, in developing the evidence, the Office did not request any information regarding appellant's allegations of overwork from the employing establishment. For this reason, the Board finds that the case is not in posture for a decision. On remand, the Office should complete development of the factual evidence, including obtaining a response to appellant's allegations of overwork on his route from a knowledgeable official with the employing establishment. Should the Office find that appellant has substantiated a compensable factor of employment, it should prepare a statement of accepted facts incorporating its findings and provide such statement to a medical specialist for an opinion on causal relationship. After such further development of the evidence as it considers necessary, the Office shall issue an appropriate final decision on appellant's entitlement to compensation.

¹⁰ *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

¹¹ *See Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹² In a report dated April 8, 1996, Dr. Iban Perez noted that appellant was recovering from by-pass surgery on his heart. He diagnosed major depression and, in an addendum to the report, stated that appellant related that the employing establishment required him to do work "without any kind of support which led him first to be affected physically. [Appellant] tells me he pushed to do well to impress his employe[r]." He attributed appellant's illness to his working conditions.

¹³ *Claudia A. Dixon*, 47 ECAB 168 (1995).

The decision of the Office of Workers' Compensation Programs dated February 13, 1997 is hereby set aside and the case is remanded for further proceedings consistent with this opinion by the Board.

Dated, Washington, D.C.
April 13, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member