

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINA M. HANKERSON and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Fort Lauderdale, FL

*Docket No. 97-2847; Submitted on the Record;
Issued August 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition within the performance of duty.

On November 19, 1997 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim, alleging that she sustained post-traumatic stress disorder and major depression on October 29, 1996. Appellant indicated that she sustained the claimed emotional conditions as a result of being placed on absent without leave (AWOL) status when she had submitted a doctor's verification of her illness and it was in her file. Appellant stopped work on October 29, 1996. In a decision dated January 23, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. In merit decisions dated March 6, May 1 and August 5, 1997, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was not sufficient to establish that modification of the prior decision was warranted.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that she sustained an emotional condition while in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where 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 Act. On the other hand, the disability is not covered where it results from factors such as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do

not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

In the present case, appellant contends that she sustained an emotional condition as a result of being placed on AWOL status when she had proper documentation from her doctor in her file. In a supplemental statement, appellant indicated that her supervisor, James Cusack had yelled at her on the workroom floor in front of other employees. In filing an Equal Employment Opportunity (EEO) complaint, appellant added that Mr. Cusack had told her she would be suspended for 14 days due to the AWOL charge. In a statement dated November 26, 1996, Mr. Cusack indicated that appellant was absent beginning October 24, 1996 although she called in on October 22, 1996 and said she would return on October 24, 1996. On October 29, 1996 she told Mr. Cusack that she sent her doctor's excuse requesting leave through October 28, 1996 and it was received at the front window. Mr. Cusack noted that when he checked her file folder, the documentation was there. On October 24, 1996 appellant had been placed on AWOL status by Ed Boltz as her immediate supervisor, had not received a call requesting leave and did not know where she was. After his discussion with appellant, Mr. Cusack asked the timekeeper, Joe Findlan, whether appellant could be changed from AWOL status to sick leave, and Mr. Findlan said it would be no problem. Appellant continued to be upset and began to cry. Mr. Cusack reported that he took her outside to calm her down. He then asked Andrew Jenkins to talk with appellant. Appellant worked for approximately 45 minutes and started to cry again. She then left for the day. A review of the other statements by appellant's coworkers indicates that Mr. Cusack provided an accurate account of the events that transpired October 29, 1996. A statement by Mr. Findlan indicated that he noted the disagreement between appellant and Mr. Cusack, that Mr. Cusack asked him whether he could change appellant's AWOL status to the proper leave status and he saw Mr. Cusack and appellant leave the work area. He also remembered seeing Mr. Cusack ask Mr. Jenkins to go outside to talk with appellant. The statement by Mr. Jenkins also confirmed that he saw appellant crying outside and was asked by Mr. Cusack to talk with her. Although appellant indicated that she filed an EEO claim, there is no indication in the record that there has been any finding of fault against the employing establishment in this matter. In addition, despite several requests from the Office for additional information corroborating appellant's recollection of events, appellant has not submitted any statements to establish that Mr. Cusack yelled at her in front of other employees. The record

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

does contain one statement dated May 10, 1997 by Mr. Findlan in which he indicates that he heard raised voices during the initial discussion between Mr. Cusack and appellant. However, Mr. Findlan's statement seems to indicate that both voices were raised. As he had previously noted that Mr. Cusack took appellant outside when she became visibly upset, there is no indication that Mr. Cusack acted improperly. In any case, the employing establishment submitted a statement which indicated that the actions by Mr. Boltz and Mr. Cusack in placing appellant on AWOL was in accordance with employing establishment policy, and Mr. Cusack denied talking to appellant about suspension. As appellant has not demonstrated that the employing establishment acted improperly or abusively with respect to this leave issue which is an administrative matter, she has not sustained her burden of proof and the action alleged is not compensable under the Act.

The decisions of the Office of Workers' Compensation Programs dated August 5, May 1, March 6 and January 23, 1997 are hereby affirmed.

Dated, Washington, D.C.
August 19, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member