

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YVONNE LEATHERWOOD and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Memphis, Tenn.

*Docket No. 97-1079; Submitted on the Record;  
Issued May 21, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

The case has been on appeal previously.<sup>1</sup> In a June 6, 1996 decision, the Board found that appellant's claim that she sustained an emotional condition due to a fear of losing her job in a reorganization of the employing establishment was not sustained in the performance of duty because fear of a reduction-in-force was not related to appellant's assigned job duties and, therefore, was not a compensable factor of employment. However, appellant also alleged numerous incidents involving her supervisor which she contended constituted harassment. The Board, therefore, remanded the case for further development by the Office of Workers' Compensation Programs on whether the incidents occurred as appellant had alleged.

On remand, the Office gathered statements from appellant's supervisor and other witnesses or coworkers at the employing establishment. In a November 22, 1996 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed condition was sustained in the performance of duty.

The Board finds that appellant has not established that she sustained an injury in the performance of duty.

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 the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability

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<sup>1</sup> Docket No. 95-124 (issued June 6, 1996). The history of the case is contained in the prior decision and is incorporated by reference.

comes with the coverage of the Act. 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 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 the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> Appellant made an allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.<sup>5</sup>

Appellant cited several incidents or factors which she claimed demonstrated harassment; on one occasion her supervisor stated he would be "right black"; she was required to report every time she left her desk and returned; her supervisor expressed anger when she failed to obtain names and other information from telephone callers, found personal mail opened and noted appellant failed to get a hard cover for an award; and she removed pornographic material from his desk on one occasion when he was in the hospital. In a September 13, 1996 letter, Mr. Lyle Ames, appellant's supervisor, responded to her claim. He stated that appellant was an excellent secretary when she began to work for him but gradually became less proficient in carrying out her routine duties and would be away from her desk for long periods at a time, as much as an hour. He related that appellant became less attentive in her duties, including completion of the memorandum of call. He commented that appellant would only list a name with no other information. He indicated that he counseled appellant on both matters which she resented. He noted that she left for a four-month period to work as an Officer-in-Charge at another employing establishment facility. During that period, additional duties were added to her former secretarial position. Mr. Ames stated that appellant was very unhappy with the additional duties and would not timely complete the tasks. He indicated that appellant continued to be absent from her work station for frequent and extended periods, leaving others to answer the telephones. He noted that

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

<sup>4</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>5</sup> *Joan Juanita Greene*, 41 ECAB 760 (1990).

he did request appellant to let someone know where she went and the time of departure. He stated that she often took sick leave and sometimes did not complete some of the paperwork properly. When he raised the paperwork problems with her, she would resent the session. He acknowledged that he once stated that he would be "right black" and that he apologized to appellant when he sensed her anger and apologized again in a subsequent meeting with appellant and others. Mr. Ames denied that he ever had any pornographic material in his desk. He indicated that he had requested appellant to bring a confidential folder from his desk containing material on employees' evaluations, appellant's leave documentation, correspondence from employees and former employees and some unfinished matters that he felt he could handle from his hospital room. He recalled that appellant opened a piece of correspondence that was marked to be opened only by him. He also remembered that appellant had forgotten to order hard back covers for certificates for appreciation to be given out. Mr. Ames noted that he discussed appellant's performance of lack of motivation to do her job on several occasions with his superiors. He indicated that during the period in question the employing establishment's finance office was undergoing many changes in procedure and computer programs, which required the old and new programs simultaneously for several months. He stated that, in order to curtail high overtime and deal with budget constraints, he asked appellant to assist in time consuming tasks of sorting and organizing the volumes of pieces of mail, receipts and other materials associated with the accounting office. He noted appellant resented this action.

Other employees, including the postmaster, indicated that they did not witness the events appellant described but only heard her discuss the incidents. One coworker recalled Mr. Ames became upset when a piece of mail marked personal was opened before he received it. He stated that he had no information of appellant removing items from Mr. Ames' desk. He noted that Mr. Ames was dissatisfied with appellant's attendance at work and had requested more work for her from the finance office. Another coworker indicated that she discussed appellant's claims of harassment with the supervisor who denied that he had harassed appellant. Another coworker recalled attending a meeting with appellant and her supervisor. She recalled that the meeting mainly concerned the requirement that appellant be regularly in attendance. She remembered that Mr. Ames acknowledged making a comment that he would be "right black" and apologized if it offended her. Another employee recalled that appellant was glad to get additional work from the accounting office because she did not have enough to do because she was very efficient and at times had nothing to do.

The matters raised by appellant cannot be considered to be compensable factors of employment. The requirement to indicate when she would be away from her desk and to include all information in memoranda of telephone calls were administrative requirements of the supervisor. The evidence of record does not establish that these requirements were improper or imposed improperly. There is also no evidence, particularly statements from eyewitnesses, that appellant's supervisor verbally abused her in relation to these matters. In relation to the issue of the opened personal mail or mail that was to be opened only by the addressee, there is no indication that the supervisor confronted or abused appellant on this matter. There is also no evidence that Mr. Ames verbally abused appellant over the issue of getting hard covers for certificates of appreciation that were to be handed out. Issues relating to appellant's use of leave and completion of paperwork relating to leave are administrative matters which are not compensable factors. There is no evidence that Mr. Ames or anyone else in the employing

establishment engaged in error or abuse in this matter. Appellant alleged that Mr. Ames made several derogatory statements to her about her weight and her use of leave. However, there is no evidence that such statements were actually made.

Appellant's supervisor admitted that on one occasion he did say he would be "right black." However, there is no evidence that the supervisor's comment was an intentional racial slur so it cannot be considered a form of harassment or discrimination. Appellant also contended that she found pornographic material in the supervisor's desk. One witness indicated that she saw the material. The material itself, however, was not described so it cannot be judged whether the material was pornographic or inappropriate to have in the office or was only judged by appellant to be pornographic. Without a more complete description, it cannot be found that the material found in the supervisor's desk would be considered a form of harassment. Appellant, therefore, has failed to establish the existence of compensable employment factors.

The decision of the Office of Workers' Compensation Programs, dated November 22, 1996, is hereby affirmed.

Dated, Washington, D.C.  
May 21, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member