

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILBERT A. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 98-1511; Submitted on the Record;
Issued April 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment.

In the present case, appellant filed a claim on October 24, 1996 alleging that he sustained emotional stress as a result of his federal employment. On the claim form, appellant indicated that there had been several violent episodes in the office where he worked. In a statement dated December 16, 1996, appellant further discussed his claim, indicating that he had been an employee since 1974. Appellant indicated that there had been verbal altercations between a coworker, Ms. Woods and several other coworkers and "all of this violent talk and yelling, screaming and threats were getting on my nerves." He also asserted that he was subject to harassment by Ms. Woods and had filed a grievance on the issue. Appellant also indicated that there had been a delay in receiving advanced sick leave in 1995 and that his request for a temporary reassignment to another tour had been denied.

In a decision dated May 8, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established compensable work factors. By decision dated March 25, 1998, an Office hearing representative affirmed the denial of the claim.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to compensable work factors.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his 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.³

In reviewing appellant's statement and testimony before the Office hearing representative, appellant has made a number of allegations regarding stress, although many are without accompanying detail and explanation. For example, he stated in his December 16, 1996 statement, that after becoming a general clerk in 1989 he realized that he was coming under stress that he had not had before, without clearly explaining the cause of the stress. Beginning with the allegation made on the claim form, appellant has asserted that there were verbal altercations between a Ms. Woods and several coworkers, which caused tension in the Office. It appears that appellant was reacting to a perception of tension in the workplace resulting from such altercations and fear of future incidents. A reaction to a perception of such tension does not relate to regular or specially assigned duties and would not be considered a compensable work factor.⁴

Appellant has alleged that he was subject to harassment from Ms. Woods and a grievance had been filed. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁵ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁶ In this case, appellant has not submitted any evidence from a grievance or other agency proceeding, nor any other probative and reliable evidence of harassment. The Board cannot find that harassment has been established as a compensable factor in this case.

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See, e.g., *Mary A. Sisneros*, 46 ECAB 155 (1994); *Mildred D. Thomas*, 42 ECAB 888 (1991).

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁶ *Helen P. Allen*, 47 ECAB 141 (1995).

The Board notes that appellant has briefly discussed some administrative actions by the employing establishment with respect to his claim. Appellant indicated that there was delay in receiving advanced sick leave in 1995 and that a request for a temporary assignment to a different tour had been denied. Although the handling of such personnel matters is generally related to employment, it is an administrative function of the employer not a duty of the employee.⁷ An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.⁸ In this case, the Board is unable to find any probative evidence of error or abuse by the employing establishment in an administrative action.

With respect to appellant's work load, appellant indicated that in 1996 a grievance was filed in which he asked that the work load be more equally shared. Although overwork may be a compensable work factor,⁹ it is not clear whether appellant is alleging that he was overworked as a general clerk. In any event, the record must establish that appellant was overworked and there is no probative evidence to support overwork in this case.¹⁰

Appellant also referred to an incident in 1993 where he worked in an office without a functioning air conditioner and had to receive medical treatment and a 1994 incident involving exposure to fumes. To the extent that appellant is alleging a physical injury resulting from these work conditions, they would constitute new separate claims for injury.

As noted above, the performance of regular or specially assigned work duties are considered compensable work factors. In this regard, appellant has referred, at least with the positions he held at the employing establishment prior to becoming a general clerk to his regular job duties. He stated, for example, that as a letter sorting machine clerk he had to maintain a rigorous accuracy rate and as an acting supervisor in 1986 he was in charge of 15 to 20 drivers and had to make sure schedules were met and equipment was available. To the extent that appellant is relating an emotional condition to the performance of his regular or specially assigned work duties, these would be compensable work factors. To meet his burden of proof, however, there must be probative medical evidence on causal relationship between the compensable work factors and an emotional condition. In a report dated December 2, 1996, Dr. Frances Rankin, a psychiatrist, notes a stressful atmosphere at work and harassment from a coworker. These have not been established as compensable work factors and Dr. Rankin does not specifically discuss any compensable work factors in his report.

The Board finds that the record does not contain a reasoned medical opinion as to causal relationship between compensable work factors and an emotional condition. Accordingly, the Board finds that appellant has not met his burden of proof in this case.

⁷ *Anne L. Livermore*, 46 ECAB 425 (1995).

⁸ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

⁹ *William P. George*, 43 ECAB 1159 (1992).

¹⁰ *See Robert W. Wisenberger*, 47 ECAB 406 (1996).

The decision of the Office of Workers' Compensation Programs dated March 25, 1998 is affirmed.

Dated, Washington, D.C.
April 5, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member