

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL V. FRATINI and U.S. POSTAL SERVICE,  
WYNKOOP TERMINAL ANNEX, Denver, CO

*Docket No. 99-1369; Submitted on the Record;  
Issued December 8, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
VALERIE D. EVANS-HARRELL

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

On December 16, 1997 appellant, then a 49-year-old distribution clerk, filed a notice of occupational disease alleging that he sustained depression, hypertension and obesity in the performance of duty. Appellant attributed his emotional condition to a series of incidents from January 1997 through February 1998.<sup>1</sup> By decision dated June 26, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had not established a compensable factor of employment. The Office detailed findings of fact regarding each of the alleged incidents or factors, finding none of them to constitute a compensable factor. Appellant disagreed with this decision, and in a July 1, 1998 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held January 12, 1999. At the hearing, appellant reiterated his allegations of discrimination and harassment on the basis of his sexual orientation, age, race, religious beliefs and gender. By decision dated and finalized March 8, 1999, the Office hearing representative affirmed the Office's June 26, 1998 decision, finding that appellant failed to establish a compensable factor of employment.

In the March 8, 1999 decision, the Office hearing representative found that four of the incidents alleged were not compensable as they had no connection to appellant's assigned duties and did not take place on postal premises: an alleged burglary in October 1997 at appellant's home; an alleged altercation on November 25, 1997 on a municipal bus with Bob Savery, a postal worker not in appellant's work unit; and allegedly being refused service at two post offices on January 11, 1998.

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<sup>1</sup> Three of the incidents were found not to be factual and, therefore, not compensable: that Sybil Goldman, a union steward, called appellant a "faggot" on January 15, 1998; unspecified disciplinary actions over an eleven-year period which appellant alleged were fabricated to deny him promotional opportunities; being locked out of his house in approximately February 1998 by a group of coworkers.

The Office further found that six incidents concerned administrative or personnel matters not within the scope of appellant's assigned duties, and that no administrative error or abuse was shown: dissatisfaction with personnel transfer and hiring practices; October 26 and 30, 1997 disciplinary emergency leave placements for "unacceptable conduct" including witnessed "profanities and racial slurs"; administrative actions concerning sick leave versus continuation of pay on January 11, 1998; being asked on January 14, 1998 to undergo a fitness-for-duty examination; a supervisor's insistence from February 23 to 26, 1998 that appellant submit a medical clearance to return to duty.

Similarly, the Office found that appellant's January 15, 1998 "charge against employer" with the National Labor Relations Board (NLRB) regarding the alleged October 1, 1997 incidents where he was refused service in two post offices, and two Equal Employment Opportunity (EEO) grievances were not considered within the performance of duty.

The Office further found that appellant's allegations that unspecified coworkers were "cold and preoccupied," "expressed animus and bigotry" and made "snide remarks," and the allegation concerning supervisor Wendell Cody yelling at appellant on October 1, 1997 were too vague to verify and was therefore not compensable.

The Board has given careful consideration to the issue involved, appellant's contentions on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized on March 8, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The decision of the Office of Workers' Compensation Programs dated and finalized March 8, 1999 is hereby affirmed.

Dated, Washington, DC  
December 8, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member