

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE A. RIVERA and U.S. POSTAL SERVICE,
PUEBLO STATION, Arecibo, PR

*Docket No. 98-1997; Submitted on the Record;
Issued February 23, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On October 2, 1997 appellant, then a 33-year-old district clerk, filed a traumatic injury claim Form CA-1, alleging that, on that date he sustained an emotional condition due to personal persecution and harassment from his supervisor, Jesus Santiago. Appellant alleged that Mr. Santiago pressured him to the point where it created stress for him. Appellant stopped work on the date of the alleged injury. On the claim form, a witness, whose signature is illegible stated that, on October 2, 1997, appellant asked him for permission to call John Cruz who had asked appellant to call him at 9:30 a.m. The witness further stated that appellant was given permission and that was when Mr. Santiago saw appellant on the telephone. The witness also stated that, after appellant finished talking to Mr. Cruz, Mr. Santiago began calling his attention to why appellant was on the telephone. Additionally, the witness stated that appellant had asked for union representation and Mr. Santiago's denial of this request caused appellant undue stress. The witness noted that appellant punched out and went to lunch. The witness concluded that Mr. Santiago waited for appellant to return from lunch and upon appellant's return, Mr. Santiago told appellant that there was no more work and to go home. On the reverse of the claim form, Mr. Santiago indicated that appellant was asked if he was working on October 2, 1997 at 9:20 a.m. because he was on the telephone for a long period of time. Mr. Santiago further stated that appellant walked away and turned his back on him. Mr. Santiago then stated that appellant was asked to give the productivity that was expected from him by the employing establishment.

In an undated letter, the Office of Workers' Compensation Programs advised appellant to submit factual and medical evidence supportive of his claim. Appellant did not respond to the Office's request.

In an October 29, 1997 letter, the Office advised the employing establishment to submit factual evidence regarding appellant's claim. In a December 15, 1997 response letter, Neida

Oliveras, the employing establishment's postmaster, explained what took place between appellant and Mr. Santiago on October 2, 1997. Specifically, Postmaster Oliveras stated that on October 2, 1997, Mr. Santiago entered the employing establishment and noticed appellant on the telephone for a long period of time. Postmaster Oliveras noted that since the employing establishment had a regulation that an employee must ask permission to use the telephone for personal business, Mr. Santiago asked appellant who gave him permission to use the telephone. Postmaster Oliveras stated that appellant responded he was going out for lunch. Postmaster Oliveras further stated that, upon appellant's return from lunch, Mr. Santiago asked him to go home since there was no work available and appellant was a part-time flexible employee. Postmaster Oliveras explained that the next day appellant called in sick and brought in a doctor's note. Postmaster Oliveras further explained that the note indicated that appellant presented with anxiety and depression and that he called the physician to verify the diagnosis since the incident on the previous day was not out of the normal routine between an employee and a supervisor. Postmaster Oliveras stated that the doctor verified the diagnosis and stated that this was normal for everyone. In response to Postmaster Oliveras' question why appellant was given 10 days rest, the physician stated that this was given based on appellant's request.¹ Postmaster Oliveras then commented that appellant was going through a lot of personal and economical problems that created stress for him and not the employing establishment. Postmaster Oliveras further commented that there was no conflict between Mr. Santiago and appellant rather, it was just a simple question regarding the use of the telephone. Postmaster Oliveras also commented that there was no variation between appellant's actual duties from his official duties and that appellant worked from four to eight hours per day according to the employing establishment's needs. Postmaster Oliveras concluded that appellant was constantly absent from work due to his personal problems. Postmaster Oliveras further concluded that appellant had an arrogant attitude, that he was not well liked by his peers and that he had problems following instructions and regulations from higher level management.

By decision dated March 17, 1998, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

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 adversely affected by factors of his federal employment. To establish his claim that he 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 his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and

¹ The record reveals an October 25, 1997 medical report from Dr. Jorge Robles Irizarry, a psychiatrist. In this medical report, Dr. Irizarry stated that appellant presented with excessive anxiety and depression that were caused by pressure and stress from his job. He stated that it was of vital importance that appellant be secluded at home for 10 days. The Board finds that Dr. Irizarry's medical report is insufficient to establish appellant's claim because it failed to identify specific employment factors that caused appellant's emotional condition.

(3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his 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. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. 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 to 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 Act.³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁴ Therefore, the initial question presented in the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁵

In this case, appellant has alleged that he was harassed by Mr. Santiago on October 2, 1997. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁶ Mere perceptions alone of harassment and discrimination are not compensable under the Act.⁷ To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment with probative and reliable evidence.⁸ Appellant failed to provide any such probative and reliable evidence in this case.

² *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-9 (1991).

³ *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 3.

⁵ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence; *see Margaret S. Kryzcki*, *supra* note 4.

⁶ *Donna Faye Cardwell*, 41 ECAB 730, 741 (1990); *Pamela R. Rice*, 38 ECAB 838, 843 (1987).

⁷ *Wanda G. Bailey*, *supra* note 2; *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *Ruthie M. Evans*, *supra* note 7.

Appellant submitted a witness statement revealing that Mr. Santiago, his supervisor, asked him why he was on the telephone. However, there is insufficient evidence that Mr. Santiago's action regarding appellant's use of the telephone rose to the level that could be considered harassment. He attempted to determine whether appellant was following the employing establishment's policy regarding the use of the telephone. Mr. Santiago told appellant to go home based on his status as a part-time flexible employee which required appellant to work four to eight hours per day based on the employing establishment's needs. Further, he indicated that appellant was constantly absent from work due to his personal problems, that he was not well liked by his peers and that he did not like to follow instructions or regulations from management. Appellant has merely presented his perception that he was being harassed by his supervisor and has not established that harassment did, in fact, occur. Therefore, appellant has failed to establish that Mr. Santiago's action constituted a compensable factor of employment.

Further, appellant's allegation that Mr. Santiago's reaction to his use of the telephone caused his emotional condition relates to administrative or personnel matters which, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.⁹ Thus, unless there is evidence of error or abuse in the administration of a personnel matter, coverage will not be afforded.¹⁰ There is no evidence of error or abuse by Mr. Santiago in this case, with regard to appellant's use of the telephone. According to Postmaster Oliveras, the employing establishment maintained a regulation regarding the use of the telephone for personal business and that Mr. Santiago was merely attempting to determine whether appellant was following this regulation. Although appellant had already received permission to use the telephone, there is no evidence of error or abuse by Mr. Santiago in asking appellant if he indeed had permission to use the telephone.

Similarly, Mr. Santiago's denial of appellant's request for union representation relates to administrative or personnel matters.¹¹ There is no evidence of error or abuse by Mr. Santiago in this case, with regard to his denial of appellant's request for union representation.

Appellant has failed to establish a compensable employment factor under the Act. Inasmuch as appellant has failed to satisfy his burden of proof, the Office properly denied appellant's claim for compensation.

⁹ *Leroy Thomas, III*, 46 ECAB 946, 952 (1995).

¹⁰ *James. E. Woods*, 45 ECAB 556 (1994).

¹¹ *Wanda G. Bailey*, *supra* note 2.

The March 17, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
February 23, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member