

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN J. PRZYBYLA and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 98-2401; Submitted on the Record;
Issued February 14, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

The Board has duly reviewed the evidence of record and finds that appellant has not established that he sustained an emotional condition in the performance of duty.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially-assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.²

On August 5, 1997 appellant, then a 34-year-old letter carrier, filed a claim for a traumatic injury alleging that a coworker, Ruth Pancari, came into the building, dropped trays on the table in the break room and spoke angrily with a stern voice which made him nervous and scared, unable to sleep that night and was a "trigger." He also submitted a report from Dr. Irving S. Wiesner, a Board-certified internist, psychiatrist and neurologist, in which he diagnosed adjustment disorder with anxiety and depression and opined that appellant was unable to work.

¹ *Dinna M. Ramirez*, 48 ECAB 308 (1997); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

² *Michael Ewanichak*, 48 ECAB 364 (1997); *Lillian Cutler*, 28 ECAB 125 (1976).

On August 20, 1997 the Office of Workers' Compensation Programs requested additional information from appellant including further description of the incident at work which caused his stress.

Appellant subsequently explained that he felt that he was being harassed at his job which was causing him stress. He made numerous allegations, most of which related to his being "harassed by coworkers, management [and] EEP counselors" to go out with other females in the office, particularly Elsie Centroni. Appellant stated that the harassment included verbal abuse, physical intimidation, being demoralized, threatened and being subjected to disciplinary action. He stated that he "made it clear" to Ms. Centroni when she first came to work at the employing establishment that he was not interested in dating her. Appellant stated that the harassment had been going on for over two and a half years. Appellant stated that other coworkers knew he used to drink a lot and told Ms. Centroni and she told him that she was going to "get [him] to go back to drinking." He stated that he notified the supervisor, Frank DeMarco and "his reply was that everyone has different personalities." He said on one occasion that Mr. DeMarco told him that he and Ms. Centroni had sex together one night which was not true. Appellant claimed crank phone calls were made to him and damage was done to his vehicle and property. He stated that Ms. Centroni and Ms. Pancari spoke to him using profane, sexual language. Appellant stated that Gale Costigan, a clerk at the employing establishment, "knocked her rear into my lower back left side, hurting [his] back." He stated that she would "bump" into him on several occasions and when she hurt his back, Ms. Pancari stated, "Was it a love tap?" Appellant stated that, on March 11, 1997, "Mr. Crozer" gave him "a forearm." He stated that on March 15, 1997 "Mr. Nuemas" ignored him. Appellant stated that Ms. Centroni repeatedly lied to him and once led him to "being forced out of a higher position."

On April 21, 1997 appellant was issued a letter of warning for excessive and abusive unscheduled absences for intermittent periods from July 31, 1996 through April 17, 1997.

In an investigative memorandum dated October 15, 1997, the employing establishment found that Ms. Pancari denied dropping the trays and speaking angrily to appellant and that appellant was not at work on July 16 or 28, 1997 when appellant alleged the incident with Ms. Pancari occurred. By letter dated October 9, 1997, the employing establishment stated that appellant accused many other employees of making statements against him but its investigation found no validity to his accusations, that appellant had no annual or sick leave and submitted his CA-1 form on August 7, 1997 after being on leave without pay and all employees were aware that appellant was claiming that other employees were making statements and were very careful not to say or do anything that could or would agitate him.

Appellant stated that he filed an Equal Employment Opportunity complaint on April 15, 1997 alleging many of the same instances of harassment as in his workers' compensation claim. The complaint was dismissed on September 26, 1997.

Appellant also submitted other medical reports from Dr. Wiesner dated September 23, 1997 and May 19, 1998.

By decision dated April 15, 1998, the Office denied appellant's claim, stating that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty.

By decision dated August 3, 1998, the Office denied appellant's request for reconsideration.

Regarding appellant's allegations of harassment, the Board has stated that the actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.³ However, to support a claim based on harassment, there must be some evidence that the harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.⁴

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁵ The issue is not whether the claimant has established harassment or discrimination under standards applied the equal employment opportunity commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁶ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁷

In the present case, appellant has not presented sufficient evidence to establish the alleged incidents of harassment. In its October 9, 1997 letter, the employing establishment noted that its investigation found no indication that the incidents appellant complained of happened, particularly Ms. Pancari's dropping trays on the desk and speaking angrily and that it had informed the employees to be very careful not to say or do anything to agitate appellant. Appellant has presented no evidence to corroborate that he was harassed by Ms. Centroni or in any other way abused by his coworkers or supervisors. Although appellant received a letter of warning on April 21, 1997, the issuance of a letter of warning is an administrative matter and constitutes a compensable factor of employment only if appellant can demonstrate that management committed error or abuse.⁸ Appellant did not show that the April 21, 1997 letter of warning citing him for excessive and abusive unscheduled absences erroneous or abusive. Further, the denial of certain kinds of leave constitutes an administrative matter and appellant has not shown that the employing establishment acted unreasonably in denying him any leave.⁹

³ *Michael Ewanichak, supra note 2; Frederick D. Richardson, 45 ECAB 454, 463 (1994).*

⁴ *Michael Ewanichak, supra note 2; June A. Mesarick, 41 ECAB 898, 908 (1990).*

⁵ *Michael Ewanichak, supra note 2; Gregory J. Meisenburg, 44 ECAB 527 (1993).*

⁶ *See Martha L. Cook, 47 ECAB 226, 231 (1995).*

⁷ *Barbara E. Hamm, 45 ECAB 843, 851 (1994).*

⁸ *See Barbara J. Nicholson, 45 ECAB 803, 809 (1994).*

⁹ *See Daryl R. Davis, 45 ECAB 907, 911 (1994).*

As appellant has failed to present evidence to establish his claim, despite the Office providing him an opportunity to do so, appellant has not met his burden to establish an emotional condition, as alleged.¹⁰

The decisions of the Office of Workers' Compensation Programs dated August 3 and April 15, 1998 are hereby affirmed.

Dated, Washington, D.C.
February 14, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ Since no compensable factors have been alleged, it is not necessary to address the medical evidence. *Diane C. Bernard*, 45 ECAB 223, 228 (1993).