

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE L. WARR and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 99-261; Submitted on the Record;
Issued May 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

The Board finds that appellant did not meet his burden of proof to establish 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 his 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

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 employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, 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.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated August 11, 1998, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that a supervisor, Dottie Mitchell, made his work environment unbearable by constantly "questioning and criticizing [him] about how and why [he] was doing his job," displaying a "negative attitude" towards him, and taking sides with coworkers who were undermining him. He asserted that, beginning in early 1997, Ms. Mitchell made negative comments and questioned the time he reported to work and the amount of time he spent performing certain work tasks. Appellant stated that Ms. Mitchell's behavior gave him the impression that she did not want him to work at the employing establishment. Regarding appellant's allegations that Ms. Mitchell unfairly criticized his work activities, mishandled the management of his work assignments, and unreasonably monitored his activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷

Although the evaluation of work performance, the management of work assignments and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁸ However, the Board

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁸ *Id.*

has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ Appellant did not submit any evidence showing that Ms. Mitchell's alleged actions constituted error or abuse in an administrative matter; appellant's allegations regarding Ms. Mitchell's management of his work activities were of a vague and general nature. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁰ Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative manners.

Appellant has suggested that Ms. Mitchell's actions and comments amounted to harassment and discrimination. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹² In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by Ms. Mitchell.¹³ Appellant generally alleged that Ms. Mitchell made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to the alleged harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁵

⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁰ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993). Ms. Mitchell submitted a statement in which she explained that her management of appellant's work activities was dictated by the needs of the employing establishment's mission.

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decision of the Office of Workers' Compensation Programs August 11, 1998 is affirmed.

Dated, Washington, D.C.
May 4, 2000

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member