

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIAN V. HAENTGES and U.S. POSTAL SERVICE,
POST OFFICE, Great Falls, MT

*Docket No. 99-1257; Submitted on the Record;
Issued October 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
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 causally related to factors of employment.

The Board has duly reviewed the record in this case and finds that appellant has not established that he sustained employment-related stress.

On September 26, 1997 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim, alleging that on August 28, 1997 his supervisor threatened him with termination, which caused stress and anxiety.¹ He stopped work on September 2, 1997. By letter dated October 30, 1997, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his claim, which was to include a detailed statement regarding the implicated employment factor and a comprehensive medical report. In response, appellant submitted medical evidence but nothing further. The employing establishment controverted the claim and submitted witness statements. By decision dated January 28, 1998, the Office denied the claim on the grounds that appellant did not sustain an injury in the performance of duty. On February 13, 1998 appellant requested a hearing that was held on September 23, 1998. At the hearing he submitted copies of employing establishment policies and a settlement agreement dated June 5, 1998 regarding a grievance filed by him regarding medical treatment. In a December 7, 1998 decision, an Office hearing representative affirmed the prior decision. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference.

To establish that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged

¹ At the time of the August 28, 1997 incident, appellant was working limited duty following an employment-related ankle injury.

to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

While, as a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act,⁴ error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonable in the administration of a personnel matter, may afford coverage.⁵ In the instant case, there is no evidence to substantiate error or abuse. Likewise, for harassment to give rise to a compensable factor of employment, there must be evidence that the implicated acts did, in fact, occur as alleged. Mere perceptions of harassment are not compensable under the Act. Here appellant is alleging that on August 28, 1997 he was threatened with termination, was verbally harassed in a meeting and was forced to attend a medical examination that was against employing establishment policy.

Regarding his allegation that he was threatened with termination and generally harassed at the August 28, 1997 meeting, the facts indicate that on that date he was asked by his supervisor, Mr. Michael Gieske, to accompany him to a meeting in the office of Timothy Meehan, Superintendent of mail processing, where he was reprimanded. The record contains witness statements and hearing testimony regarding the events of August 28, 1997 from Billy J. Berryman, Supervisor of distribution operations, Mr. Meehan and Mr. Gieske, who all denied that appellant was threatened with termination or in any way harassed in the meeting at issue. Appellant submitted nothing to substantiate his allegations and the Board, therefore, finds that this instance of purported harassment did not occur.

The Board further finds that the fact that appellant was taken to the emergency room by Mr. Gieske would not constitute a compensable employment factor. The record indicates that after being reprimanded by Mr. Gieske on August 28, 1997, appellant requested to go home, was told he could not and then said he was sick. Mr. Gieske then told appellant he would take him to the emergency room, which he did. The record indicates that appellant agreed to go to the emergency room and Mr. Meehan testified that if an employee wants to go home sick, it was the facility's policy to take the employee to the doctor. As the supervisor viewed this as an emergency situation, the Board finds that this was a permissible administrative action.

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

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 5 U.S.C. §§ 8101-8193; *see Norman A. Harris*, 42 ECAB 923 (1991).

⁵ *Kathleen D. Walker*, 42 ECAB 603 (1991).

Appellant, therefore, failed to establish that he sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated December 7, 1998 is hereby affirmed.

Dated, Washington, DC
October 5, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member