

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACKIE E. LEE and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Oakland, CA

*Docket No. 00-1980; Submitted on the Record;
Issued June 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On July 1, 1999 appellant, then a 51-year-old mailhandler, filed a claim for an anxiety disorder that he attributed to employing establishment management using him and lying to him about promotions and higher level assignments, his assignment to duties that required no thinking and to "the treatment of managers, supervisors and craft employees." In response to a request from the Office of Workers' Compensation Programs to further describe factors of his employment to which he attributed his condition, appellant submitted an August 27, 1999 statement that he began working at the employing establishment on March 13, 1967 as a mailhandler, that he became a shop steward in 1970, and that he served from 1984 to 1993 as a union regional director, which was a full-time union position. Appellant continued that when his tenure as regional director for the union ended in 1993, he obtained a position at the employing establishment as a labor relations specialist and that he accepted this position as a detail, with the assurance from a plant manager that he would obtain a promotion or that the detail would be made permanent. He stated that he requested training but was told he was ready to perform the position due to his advocacy skills, that there was an ongoing dispute among employees of the labor relations office and that "there was an adversarial relationship between the labor relations department and some high level managers, postmasters and supervisors," who complained that they were not receiving proper advice, representation, and support from the labor relations office. Appellant contended that he was treated differently from the other labor relations specialists, in that he was not given all the books possessed by the other specialists, although he was able to obtain the books and manuals he needed, that he had to obtain his own furniture, that he was not given a computer or given arbitration training for over two years, and that he had still not received the certificates for the training he completed. He stated that he was reassigned to a supervisory position outside the labor relations office July 1996, but that other detailed labor relations specialists remained there for almost two years, contrary to what he was told by the senior labor relations specialist. Appellant stated that he advised his new supervisor regarding a charge of sexual harassment, that his supervisor did not discipline employees fairly and equally, that he and the new supervisor had disagreements over disciplinary actions to be taken toward subordinate employees, and that he voiced his concerns but complied with his supervisor's

instructions. He stated that he worked 13 or 14 hours per day during the 1998 Christmas season, that his brother-in-law passed away on December 23, 1998 that he took December 24, 1998 off to make funeral arrangements, that his supervisor refused to allow him to take December 31, 1998 off for the funeral, that a few hours after their disagreement about this leave request, appellant was told that there would be an immediate cutback in supervisory positions, that his supervisory position was the only one cut back and that he then obtained a position as a mailhandler. Appellant submitted medical reports from Dr. James P. Howard, a clinical psychologist, who diagnosed an anxiety disorder related to stress in appellant's employment.

By decision dated September 20, 1999, the Office found that the evidence failed to establish that appellant's claimed disability arose out of and in the course of his federal employment. The Office found that none of the substantiated incidents and conditions cited by appellant were compensable factors of employment, that denial of leave was not compensable in the absence of error or abuse, and that "the evidence, taken as a whole, shows that the claim of stress-related disability arises from claimant's disillusionment with the employer's promises, either implied or explicit, and frustration with lack of career advancement opportunities."

By letter dated October 16, 1999, appellant requested a review of the written record and contended that his claim was not predicated upon not receiving a promotion or assignment to a higher level position. He stated that his first act as a labor relations specialist was to convince the plant manager to reduce the proposed removal of two mailhandlers to suspensions, a position with which many supervisors and managers did not agree. Appellant stated that his recommendation that another employee not be removed was not followed, that he was labeled a union sympathizer and that this employee won her arbitration and was reinstated. He also stated that after he accepted a position as a labor relations specialist, some of the mailhandlers and clerks he had known for years started calling him a sell out, even when the employing establishment's actions were fair and just, that he had to take actions, including removals, against employees he had known for years and that he knew some of these actions were wrong.

By letter dated December 6, 1999, the Office submitted appellant's October 16, 1999 letter to the employing establishment and requested its comments. Having received no response, an Office hearing representative issued a decision dated February 14, 2000, finding that appellant "failed to establish that an emotional condition arose in the performance of duty," and that he had "not established any compensable employment factors." The Office hearing representative found that appellant "essentially alleges that he suffered an emotional condition due to a pattern of harassment at work; however, he failed to provide reliable, probative and substantial evidence that such harassment did in fact occur." The Office hearing representative also found that the other incidents cited by appellant were administrative or personnel matters, in which he had not established error or abuse.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability

resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employee's Compensation Act. Nor is disability covered when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position.¹

Thus, appellant's disappointment at not being given a promotion and not being allowed to continue working in the labor relations office are not covered under the Act. The elimination of his supervisory position and his reversion to a position as a mailhandler are also not covered, nor is the fact that appellant considered the mailhandler position unchallenging and beneath his capabilities.² Appellant contends that managers at the employing establishment broke their promises to provide him with a permanent detail or a promotion, but there is no showing that such representations, if made, were enforceable in any forum. Appellant's perception that his supervisor did not fairly discipline or otherwise treat subordinate employees fairly or equally amounts to dissatisfaction with perceived poor management and is not covered under the Act.³

Appellant has attributed his emotional condition to alleged administrative actions by his supervisor. Appellant cited the employing establishment's denial or delay of requested training, its delay in providing him with a computer, and its refusal to grant him leave on December 31, 1998 for his brother-in-law's funeral, all of which are considered administrative or personnel matters.⁴ Although administrative and personnel matters are generally related to the employment, they are functions of the employer and not duties of the employee. The Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁵ Appellant has not submitted any evidence that the administrative actions were made in error or were in fact abusive. As his allegations lack substantiation of error or abuse on behalf of the employing establishment, they are not compensable in this case.

Appellant, however, has also cited incidents and conditions that concerned the performance of day-to-day or specially assigned duties. He stated that when he was detailed to a position as a labor relations specialist, he had to obtain his own furniture. Appellant also cited an incident in which management did not follow his recommendation to reduce the disciplinary action against an employee, and the requirement of his position that he take action, including removal, against employees he had known for years. He also alleged that he worked 13 to 14 hours per day during the 1998 Christmas season. An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² See *Purvis Nettles*, 44 ECAB 623 (1993).

³ See *Artice Dotson*, 42 ECAB 754 (1990).

⁴ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992)(Training); *Apple Gate*, 41 ECAB 581 (1990)(Leave); *Harriet J. Landry*, 47 ECAB 543 (1996)(Equipment).

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995).

the Act.⁶ Thus, if an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable.⁷

Appellant has cited some compensable factors of employment and the employing establishment, given an opportunity to comment on appellant's allegations, did not refute any of them. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁸

The only medical evidence appellant submitted regarding his emotional condition consisted of two reports from Dr. Howard. While these indicate that stress at work caused or exacerbated his emotional condition, neither report contains a history of specific incidents and conditions of employment or a rationalized opinion on causal relation. For this reason, the medical evidence is insufficient to establish appellant's claim.

The decision of the Office of Workers' Compensation Programs dated February 14, 2000 is affirmed.

Dated, Washington, DC
June 4, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ *Clara T. Norga*, 46 ECAB 473 (1995).

⁷ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

⁸ *Bruce E. Martin*, 35 ECAB 1090 (1984).