

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN STONE and U.S. POSTAL SERVICE,
POST OFFICE, Ceres, CA

*Docket No. 00-620; Submitted on the Record;
Issued March 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty as alleged.

The procedural history of the case is as follows. On June 8, 1998 appellant, then a 44-year-old window clerk, filed a notice of occupational disease alleging that she sustained an emotional condition due to a pattern of harassment from May 1 to 20, 1998 by Postmaster Ken Trew. Appellant also alleged that Mr. Trew wanted her to work outside medical restrictions related to a previous lumbar injury. The Office of Workers' Compensation Programs denied appellant's claim, by a November 23, 1998 decision, finding that appellant had failed to establish a compensable factor of employment. The Office accepted that appellant was disabled for work from April 29 to May 5, 1998 as the employing establishment could not accommodate her medical restrictions during that interval.

Appellant disagreed with this decision and requested a hearing before a representative of the Office's Branch of Hearings and Review, held May 1, 1998. By decision dated July 26 and finalized July 27, 1999, the Office hearing representative affirmed the November 23, 1998 decision, finding that appellant has failed to establish a compensable factor of employment.

In this case, appellant attributed her emotional condition in part to an alleged pattern of harassment by Mr. Trew, but did not submit any evidence corroborating specific incidents of harassment. The Board notes that unfounded perceptions of harassment do not constitute an employment factor, and that mere perceptions are not compensable under the Federal Employees' Compensation Act.¹ Thus, appellant has not established that she was harassed.

Appellant also attributed her condition to frustration over being assigned certain duties as a window clerk. She did not assert any insecurity regarding her ability to perform her assigned

¹ Kathleen D. Walker, 42 ECAB 603 (1991).

duties, and testified at the May 18, 1999 hearing that she did not lack any necessary training. Instead, the record reflects that appellant tried to create a customized position for herself by attempting to take over various duties of other employees whom she alleged were overworked, and was frustrated and disappointed by Mr. Trew's refusal to allow her to assume those duties. At the hearing, appellant described her extensive experience in different aspects of postal operations, including the finance office, customer service, parcel processing, letter sorting, and that she was previously a letter carrier. She asserted that she could have performed many duties other than those of a modified window clerk, and that she should have been permitted to do so. However, disabling conditions resulting from an employee's desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² Thus, appellant's emotional reaction to not being allowed to design her own job or to perform certain duties is not compensable.

Appellant also attributed her condition to reactions to matters involving the assignment of work and receiving job instructions. She alleged that Mr. Trew instructed her regarding job requirements on May 1, 1998, observed her work on May 12, 1998, that supervisor Dolly Martinez would not let appellant perform express mail or supply duties on May 13, 1998, that Ms. Martinez performed certain duties on May 19, 1998, and that Mr. Trew instructed appellant on May 18 and 20, 1998 not to perform certain computer tasks. The assignment of work and customary supervisory functions are considered administrative matters not within the performance of duty. While the Board has also found that administrative matters will be considered employment factors where the evidence discloses error or abuse on the part of the employing establishment, appellant submitted insufficient evidence to establish that the employing establishment erred or acted abusively with regard to the assignment of work or Mr. Trew's supervision. Thus, appellant has not established a compensable employment factor under the Act in these respects.³

Appellant submitted insufficient evidence to establish the remainder of her allegations as factual.⁴

The Board has given careful consideration to the issue involved, appellant's contentions on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated July 26, 1999 and finalized July 27, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

² *Raymond S. Cordova*, 32 ECAB 1005 (1981).

³ *See Frederick D. Richardson*, 45 ECAB 454 (1994).

⁴ *See Lorraine E. Schroeder*, 44 ECAB 323 (1992).

The decision of the Office of Workers' Compensation Programs dated July 26, 1999 and finalized July 27, 1999 is hereby affirmed.

Dated, Washington, DC

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March 26, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member