

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL J. LOESCH and U.S. POSTAL SERVICE,
POST OFFICE, Hauppauge, N.Y.

*Docket No. 96-2561; Submitted on the Record;
Issued June 29, 1998*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition in the performance of his federal employment.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof in this case.

In the present case, appellant, a letter carrier, filed a notice of traumatic injury on February 16, 1996 alleging that he had sustained an emotional condition on that day because "letter carrier Anthony Ferri threatened to use his authority when he's acting supervisor to fire me...." The Office of Workers' Compensation Programs denied appellant's claim by decision dated June 20, 1996.

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 his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his 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 in not being permitted to work in a particular environment or to hold a particular position.¹

¹ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on reconsid.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

The Board has also found that to the extent that a dispute or incident alleged as constituting harassment by a coworker is established as occurring and arising from appellant's performance of his regular duties, such could constitute a compensable factor of employment pursuant to the Act.²

In a statement dated February 23, 1996, Anthony Ferri stated that a few days prior to February 16, 1996, while he was working as a letter carrier and was not an acting supervisor, appellant had stated in a loud voice that "any 204B (Acting Supervisor) is an asshole." Mr. Ferri stated that at the time he decided to let the situation pass, however, after a day or two he decided to discuss the situation with appellant because appellant constantly berated management out loud. Mr. Ferri stated that on February 16, 1996 he asked appellant not to make remarks such as he had made a few days prior. Appellant responded that "go fuck myself and fuck you mother too." Mr. Ferri stated that as appellant had mumbled the mother part he asked appellant if he had said "I should fuck my mother" and appellant replied "no." Mr. Ferri stated that as he walked across the workroom to report the incident to his supervisor, appellant yelled that he had been harassed. The record also indicates that Supervisor Dennis West spoke to appellant on February 16, 1996 about the incident with Mr. Ferri and that shortly thereafter appellant filed the form CA-1.³

Appellant also submitted statements from Vincent Calvanese, his shop steward. Mr. Calvanese stated that on February 16, 1996 appellant called to him from across the work room floor, and he saw Mr. Ferri, standing by appellant. Mr. Calvanese stated that while he did not hear what Mr. Ferri said, he believed there was a problem between Mr. Ferri and appellant.

While the evidence of record does indicate that appellant had a discourse with Mr. Ferri on February 16, 1996, the evidence of record does not establish that appellant was harassed by Mr. Ferri regarding his job duties. Appellant has alleged that he was threatened and told by Mr. Ferri that he would be fired when Mr. Ferri became acting supervisor. The witness statements from Mr. Calvanese do not corroborate a threat by Mr. Ferri, but only indicate that an interaction did occur. Mr. Ferri has stated that he did speak with appellant on February 16, 1996, but that he merely informed appellant that he should not in the future make derogatory remarks directed at the employing establishment's management. The Board therefore finds that the appellant did not meet his burden of proof to establish that he was subjected to harassment by coworkers arising from appellant's performance of his regular duties. The Office therefore properly denied appellant's claim as appellant had not established a compensable factor of employment pursuant to the Act.

The decision of the Office of Workers' Compensation Programs dated June 20, 1996 is hereby affirmed.

Dated, Washington, D.C.

² See *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

³ The evidence of record also indicates that on February 12, 1996 appellant had been given a letter of warning for work deficiencies. Appellant has stated that this letter of warning did not contribute to his condition on February 16, 1996 as he already had requested arbitration regarding this matter.

June 29, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member