

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY KIM FEDEI, claiming as widow of BARRY LEE FEDEI and
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, Pa.

*Docket No. 97-2315; Submitted on the Record;
Issued May 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that the employee's death was causally related to compensable factors of his federal employment.

On August 29, 1995 the employee, a 48-year-old letter carrier, was on a lunch break from delivering his route when he experienced severe chest pain.¹ An ambulance was called and the employee went into cardiac arrest in the ambulance and could not be revived. The cause of death was reported as cardiac insufficiency due to coronary artery disease.²

Appellant claimed widow's benefits, contending that the employee's death was due to a heart attack on the job due to stress and harassment from management. Appellant argued that the employee had the stress of coping with a different route every day, with daily harassment from Luis Espinosa, a temporary supervisor, with a letter of warning, with not being given adequate time to learn his new route, with being denied assistance as requested, with being questioned by Postal Inspectors and with working in extreme heat.

Appellant submitted a statement from the employee documenting numerous occasions in July 1995 when he requested but was denied assistance and was denied adequate time to learn the route. Appellant stated that Mr. Espinosa harassed the employee for three and one half to four weeks until Mr. Espinosa was removed on August 14, 1995, two weeks before the

¹ Appellant had experienced left arm pain for several preceding days, and had a history of hospitalization for chest pain 10 months prior.

² After autopsy, the employee's death was found to be due to myocardial insufficiency due to severe coronary artery disease of the four major heart vessels due to arteriosclerosis. The examining physician noted that the myocardium showed an old myocardial infarction in the posterior wall at the junction of the septum which had become fibrotic, and that the lungs were markedly anthracotic consistent with cigarette smoking. Also noted was myocardial hypertrophy of the left ventricle and emphysema. The manner of death was noted as natural.

employee's death.³ Appellant also submitted a grievance from the employee regarding not being given adequate time to learn the route and alleging sexual discrimination. Appellant submitted the June 16, 1995 letter of warning to the employee from Mr. Espinosa for delaying the mail, curtailing delivery of first class mail and failure to follow instructions on June 10, 1995, and the employee's response to the letter. The employee had also grieved the letter of warning. Appellant, a coworker of the employee, noted that she witnessed Lelis Sheets yell at her husband for leaving mail behind and accuse him of hiding mail and of not advising his supervisor.⁴ She alleged that she witnessed Mr. Espinosa tell her husband to get back to his case and that if he did not keep leaving his case he would not need assistance, that she witnessed Mr. Espinosa leaning a few yards away from the employee and staring at him, that she saw Mr. Espinosa yell at the employee for leaving his case to go to the men's room and that Mr. Espinosa yelled at the employee for leaving somewhat early. Appellant stated that when the employee got home he always had a headache, and she attributed this to constant staring, lack of help on the route, Postal Inspectors, and extreme heat.

Appellant submitted a letter from William Clark, one of the employee's coworkers, which stated: "I believe [the employee] was not given the proper time or training necessary to facilitate his duties.... I also believe that he did experience episodes of harassment from Mr. Luis Espinosa." Another coworker statement from Susan Gilroy noted that the employee complained about the hills on his route and the kinds of people to whom he had to deliver. A statement from Michael Lynn, a coworker, opined that the employee was not given the proper amount of time to learn his route, that Mr. Espinosa would constantly look and stare at the employee, stand next to him, clap his hands, and bounce up and down and talk to him more than any other carrier on the workroom floor. He stated that Mr. Espinosa on occasion got loud with the employee. A statement from Roger Fenetti, a coworker, noted that the employee complained frequently about the lack of help and Mr. Espinosa's staring games and intimidation, and about lack of time to learn the route and lack of street assistance. In a December 30, 1995 statement, Robert Kovach, President of the NALC, noted that the employee had complained to him on five occasions about being denied assistance, and he indicated that the employee's grievance regarding the letter of warning had been sustained on October 10, 1995 and the letter had been withdrawn from the employee's personnel file.⁵

In a January 25, 1996 letter addressing appellant's allegations, the employing establishment noted that Mr. Espinosa denied harassing the employee, and that the letter of warning was justified as the employee knew better than to leave first class mail behind. It also noted that requests for assistance were denied only for two reasons: if no help was available; or if the request was unreasonable. It noted that reasonability was determined based upon daily records of the amount of mail delivered and the time it took. The employing establishment interviewed Herb Little, a supervisor, who noted that the employee did voluntarily bid for the route in question, that there was, to his knowledge, no harassment from management, that first

³ Mr. Espinosa's last day was actually August 9, 1995, approximately three weeks prior to the employee's death.

⁴ No specific date or time was identified.

⁵ The Board notes that the present record is devoid of any factual evidence supporting this disposition.

class mail was never curtailed or left in the office for nondelivery, and that the employee's practice was to ask for more help than he actually needed. It noted that when the employee took over Route 1027, he often requested auxiliary assistance so he could study change-of-address cards, when there were limited-duty people in the office who were able to review the forwarding mail on the employee's behalf, making his requests unnecessary. On the day of the employee's death the employing establishment noted that he left the office 40 minutes later, yet received 90 minutes of street assistance.

By statement dated November 7, 1995, the employing establishment manager noted that he had granted the employee and appellant simultaneous leave from May 5 to May 20, 1995 for their honeymoon, which the union protested, that he granted the employee and appellant simultaneous days off, which the union also protested, that the union, and not the employing establishment, was the cause of the employee losing his regular route due to his seniority status, that he concurred with the employee receiving a letter of warning for failure to deliver first class mail, and that Mr. Espinosa was a temporary replacement for the employee's regular supervisor while he was on vacation. He also noted that he had investigated the employee's allegations of sexual harassment and found no supporting evidence. In a statement by Mr. Espinosa, he claimed that there was no assistance available for the employee when he asked, that the employee did not let him know about the first class mail left behind and appeared to try to hide it as the mail was turned upside down, and he denied that he singled out the employee for observation, staring or harassment.

By letter dated January 26, 1996, the employing establishment controverted appellant's claim, noting that appellant smoked three packs of cigarettes a day, that he drank coffee in quantity, and that he had hereditary tendencies towards heart disease. It noted that appellant and the employee had only been married three months at the time of his death, such that she was not entitled to Office of Personnel Management survivor's benefits, which required nine months of marriage, and that she was distraught over this and indicated that she would get an attorney to obtain survivor's benefits. Appellant also submitted a statement arguing that the nine-month clause was against her civil rights.

By decision dated April 4, 1996, the Office denied appellant's claim for survivor's benefits, finding that the evidence of record failed to establish that the employee's death occurred in the performance of duty. The Office found that the incidents alleged did not occur in the performance of duty, and that the medical evidence was speculative at best.

Appellant, through her representative, requested a hearing, which was held on November 18, 1996. At the hearing Mr. Clark, a coworker, testified that he did witness the employee being stared at by Mr. Espinosa and having an argument with the employee,⁶ and that the employee was denied requested assistance "many times in that two-week period that he was being supervised by Espinosa." Mr. Lynn testified that Mr. Espinosa might have been bothering others but that he zeroed in on the employee, that he cornered the employee who could not run away,⁷ and that there was a lot of mail on the employee's route which was a lot to carry.

⁶ No specific date or time was identified.

⁷ No specific date or time was identified.

Mr. Fenetti testified that Mr. Espinosa's management style was different from the regular supervisor, that he was a pain to get along with and that it seemed that the employee got the brunt of it. Appellant testified that the employee's route was hilly, that he filled out the proper paperwork for the route when he needed assistance, that she heard Ms. Sheets screaming at someone while she was in the locker room and came out to discover that it was her husband.⁸ Appellant's representative argued that the stress to which the employee was exposed was the erroneous and abusive letter of warning, and that such stress caused accelerated coronary artery disease causing his demise.

Appellant submitted a November 17, 1996 report from Dr. Howard J. Eisen, a Board-certified cardiologist, which stated that he had not examined the employee but that, upon review of the records, he concluded that the employee died of ischemic heart disease. Dr. Eisen noted well-established triggers for sudden cardiac death included the activation of the sympathetic nervous system by stress, that the employee had indicated to his wife that he was under stress, that sympathetic nervous system activation results in ventricular fibrillation and death, and that this was the cause of death in the employee. Appellant had previously submitted a February 13, 1996 report from Dr. Eisen which stated that it was entirely plausible that the stress the employee was under, while not necessarily being the sole event causing his coronary artery disease, may well have contributed significantly to its progression and also to his ultimate demise. He explained that stress activates the sympathetic nervous system which produces adrenaline which increases myocardial oxygen consumption, and also aggravates arrhythmias and damages the endothelium of the arteries causing atherosclerosis. Dr. Eisen opined: "job-related stress ... was not the sole cause of his severe coronary artery disease and subsequent death, but was likely the major contributor to his death from coronary insufficiency."

By letter dated December 26, 1996, the employing establishment addressed appellant's claims, noting that the employee's route was rebid due to established procedures, that Mr. Espinoza was transferred, with his last day being August 9, 1995, almost three weeks before the employee's death, that the only reason the letter of warning was removed from the employee's file six weeks after his death was that it served no purpose since he was deceased, that it was not abusive or in error as leaving first class mail in the office was not an option, that requests for help were dependent upon several circumstances as evaluated by the supervisors, and that there was not an unlimited availability of help, and that the employee's discrimination charges were unfounded.

By decision dated March 29, 1997, the hearing representative affirmed the April 4, 1996 decision denying appellant's claim, finding that she had not established any compensable factors of employment.

The Board finds that appellant has failed to establish that the employee's death was causally related to compensable factors of his federal employment.

To establish appellant's claim that the employee sustained stress in the performance of duty, which precipitated his coronary insufficiency, appellant must submit the following:

⁸ No specific date or time was identified.

(1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that his death was due to or aggravated by an emotional reaction; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his death.⁹ 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. Such an opinion of the physician 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.¹⁰

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.¹² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.¹³

When working conditions are alleged as factors in causing disability, the Office, 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

⁹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁰ See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 9.

¹¹ *Lillian Cutler*, 28 ECAB 125 (1976).

¹² *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

¹³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.¹⁴ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁵ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹⁶

In the instant case, appellant alleged that the employee was exposed to multiple stressors: losing his regular route; being harassed by Luis Espinoza; being given a letter of warning by Mr. Espinoza; being questioned by Postal Inspectors; being given inadequate time to learn his route, being given inadequate assistance on his route; and sexual discrimination.

The facts of record support that the employee lost his regular route due to an established administrative process based upon seniority, and instituted by the union. Loss of a specific job assignment is an administrative action and relates to administrative matters rather than appellant's ability to perform his regular or specially assigned duties and, therefore, does not fall within coverage of the Act, unless error or abuse is demonstrated in its handling.¹⁷ As no such administrative error or abuse has been established in the union initiated rebidding of routes based upon seniority in this case, the loss of the employee's regular route is not a compensable factor of employment.

Appellant also alleged that the employee's stress was caused by supervisory harassment. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹⁸ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹⁹ In this case, the evidence consists of statements from several coworkers which provide their general impressions that, during the two to three weeks that Mr. Espinoza was supervising the employee, he was harassing the employee by staring at him, "zeroing in on him," cornering him, clapping his hands and rocking on his feet. However, none of the statements are sufficiently specific as to date and time and incident so as to establish an actual occurrence of harassment. Further, the statements are not sufficient to establish that

¹⁴ See *Barbara Bush*, 38 ECAB 710 (1987).

¹⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁶ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁷ See *Sharon K. Watkins*, 45 ECAB 290 (1994).

¹⁸ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁹ *Ruthie M. Evans*, *supra* note 13.

this alleged behavior rises to the level of supervisory harassment. Additionally, the employing establishment and Mr. Espinosa have denied any harassment. Therefore, the Board finds that appellant has failed to submit sufficient, probative and substantial evidence in support of her allegations of supervisory harassment. Appellant has the burden of establishing a factual basis for her allegations; however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from the employee's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Appellant alleged that the letter of warning the employee received on July 12, 1995 regarding the incidents of July 10, 1995 was erroneous and abusive. Disciplinary matters such as a letter of warning for conduct pertain to actions taken in an administrative capacity, and are not compensable unless administrative error or abuse is demonstrated.²⁰ In this case appellant alleged that the issuance of the letter of warning was in error and was abuse, as the employing establishment removed it from the employee's file after his demise. Although the union president attributes its removal to a resolution of the employee's grievance in his favor, the employing establishment stated that it was removed from the employee's record solely as it no longer served any purpose, the employee being deceased. No other factual evidence was submitted to the record to document that the employee's grievance was resolved in his favor with the letter of warning being removed as a consequence. Therefore, appellant has not factually demonstrated that the letter of warning was in error.

Appellant alleged that the employee's interview with the Postal Inspectors was a factor in the development of his condition. Investigations are administrative functions of the employing establishment that do not involve an employee's regularly or specially assigned duties and are not considered to be employment factors.²¹ Therefore, being questioned by Postal Inspectors cannot be considered to be a compensable factor of employment absent evidence of error or abuse.

Appellant alleges that the employee was not given adequate time to learn his route. Allegations pertaining to training relate to administrative or personnel matters unrelated to an employee's regular or specially assigned duties and do not fall within the coverage of the Act, unless error or abuse is demonstrated.²² No such abuse was demonstrated in this case, particularly since the employee had 28 years of prior experience delivering various routes. Consequently, this cannot be considered to be a compensable factor of employment

Appellant also alleged that the employee was not given adequate assistance when requested. The employing establishment has made clear that approving assistance is an administrative judgment predicated upon multiple factors. In *Thomas D. McEuen*²³ the Board

²⁰ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara E. Hamm*, 45 ECAB 843 (1994).

²¹ *Linda Krotzer (Charles A. Krotzer, Jr.)*, 46 ECAB 754 (1995).

²² *Michael Thomas Plante*, 44 ECAB 510 (1993).

²³ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.²⁴ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: supervisory oversight of appellant's performance, training time allotted to learn the route, and assistance granted to help appellant with his route. Appellant argued that Mr. Espinosa's observations of the employee's functioning were abusive, but she has provided no explanation as to how it was abusive, as it was described as part of Mr. Espinosa's job. Appellant argued that lack of training time was abusive, but she provided no supporting evidence that a veteran employee of 28 years needed significantly more time to learn the route than what was allotted. Appellant argued that the refusal of more assistance than that provided was abusive, but she has presented no evidence that such requested assistance could have been easily accommodated based on the specific days' manning, or that it was denied capriciously or maliciously. Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions, and therefore they are not compensable now under the Act.

Finally, appellant alleged that the employee was discriminated against sexually, which was denied by the employing establishment, and was not supported after investigation of the grievance. Appellant alleged that the employee was treated differently than two female employees, but she failed to demonstrate that this treatment was not warranted as the two females were much newer to the employing establishment and had less experience. Consequently, this is not a compensable factor of employment.

As appellant has failed to implicate any compensable factors of employment, the medical evidence of record need not be addressed.

²⁴ See *Richard J. Dube*, 42 ECAB 916 (1991).

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 4, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 20, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member