

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA WACTOR and U.S. POSTAL SERVICE,
POST OFFICE, Houston, Tex.

*Docket No. 97-2390; Submitted on the Record;
Issued May 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant filed a claim on April 9, 1997 alleging that beginning on October 23, 1995 she developed anxiety, stress and tension due to racial discrimination, hostile conditions, denial of leave of absence and harassment. The Office of Workers' Compensation Programs denied appellant's claim by decision dated June 13, 1997.

Workers' compensation law does not apply 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.¹

Appellant attributed her emotional condition to the denial of sick leave, the requirement that she personally call in for sick leave, the denial of sick leave for surgery and the denial of annual leave on December 1, 1995. Appellant also stated that she did not receive the calendar to request annual leave in a timely fashion. Appellant's supervisor responded and stated that

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

appellant was not denied sick leave, was not required to submit medical documentation and that there was an employing establishment policy regarding leave in December.

Appellant attributed her emotional condition to letters of warning and other disciplinary actions. Appellant received a letter of warning on January 26, 1996 for failure to follow instructions. She also received a letter of warning on March 31, 1997 for failure to report an accident and on April 10, 1997 she received an addendum to the March 31, 1997 letter.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²

The Board has held that issues regarding leave³ and discipline⁴ are administrative matters and that absent evidence of error or abuse will not be considered factors of employment. Appellant has not submitted any evidence of error or abuse on the part of the employing establishment regarding leave denial or requirements. Therefore, she has not established these factors of employment.

Appellant also attributed her emotional condition to the actions of coworkers which did not affect her directly. She stated that a coworker was accused of sexual harassment and improper actions. As these actions did not relate to appellant's regular or specially assigned duties, the actions of her coworkers are not related to appellant's employment and do not constitute factors of her federal employment.

Appellant alleged that she was harassed and that she experienced discrimination. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁵ Appellant has submitted no evidence that the employing establishment harassed or discriminated against her. Therefore she has not established these allegations as factors of employment.

² *Martha L. Watson*, 46 ECAB 407 (1995).

³ *Joe L. Wilkerson*, 47 ECAB 604, 606 (1996).

⁴ *David G. Joseph*, 47 ECAB 490, 497 (1996).

⁵ *Alice M. Washington*, 46 ECAB 382 (1994).

Appellant also indicated that her emotional condition was due to her fear that her position was in jeopardy. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁶

As appellant has not submitted the necessary evidence to establish a factor of employment, she has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The decision of the Office of Workers' Compensation Programs dated June 13, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 10, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁶ *David G. Joseph, supra* note 4 at 496.