

U. S. DEPARTMENT OF LABOR  
Employees' Compensation Appeals Board

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In the Matter of DALE M. NEWBIGGING and U.S. POSTAL SERVICE,  
POST OFFICE, Buffalo, NY

*Docket No. 98-2592; Submitted on the Record;  
Issued August 25, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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 providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>5</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

In November 1990 appellant, then a 45-year-old retired postal carrier, filed a claim alleging that he sustained an emotional condition as a result of a number of employment incidents and conditions.<sup>7</sup> By decision dated August 11, 1994, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated and finalized February 1, 1996, an Office hearing representative affirmed the Office's August 11, 1994 decision.<sup>8</sup> By decision dated August 6, 1998, the Office affirmed its February 1, 1996 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions such as discussions and suspensions, improperly assigned work duties and unreasonably monitored his activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>9</sup> Although the handling of disciplinary actions, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>10</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing

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<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> Appellant's claim was filed on his behalf by his father. Appellant stopped work in February 1986 and later retired on disability retirement. The Office initially determined that appellant's claim was untimely, but it later found that it was in fact timely.

<sup>8</sup> By decision dated March 4, 1997, the Office determined that appellant had established overtime work as a compensable employment factor and remanded the case to the Office. By decision dated April 4, 1997, the Office vacated its March 4, 1997 decision.

<sup>9</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. Dedonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>10</sup> *Id.*

establishment acted reasonably.<sup>11</sup> Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also generally alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>12</sup> However, 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.<sup>13</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.<sup>14</sup> Appellant alleged that supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>15</sup> Moreover, appellant's allegations in this regard were of a vague and generalized nature. Thus, appellant has not established a compensable employment factor as to the claimed harassment and discrimination.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.<sup>16</sup> In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy work load and imposition of unreasonable deadlines. Appellant indicated that he experienced stress due to completing the demands of his job and by working overtime. He has submitted evidence which shows that he worked substantial overtime in the early to mid 1980s.<sup>17</sup> Therefore, appellant has established a compensable factor with respect to working overtime. He also alleged that he sustained stress due to being subjected to loud noise in the ordinary course of

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<sup>11</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>12</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>13</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>14</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>15</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>16</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>17</sup> The employing establishment indicated that overtime work was voluntary, but it did not dispute appellant's assertion that he performed notable overtime work.

performing his work duties. The record contains statements in which coworkers indicated that appellant was continually subjected to loud noise, including that from radios, in the workplace. The Board has held that being subjected to loud noise in the ordinary course of performing one's work duties can constitute an employment factor and appellant established a compensable factor in this regard.

In the present case, appellant has established a compensable employment factor with respect to overtime and noise exposure. As appellant has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.<sup>18</sup> After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

The decision of the Office of Workers' Compensation Programs dated August 6, 1998 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
August 25, 2000

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>18</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).