

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARRY A. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 99-940; Submitted on the Record;
Issued August 14, 2000*

DECISION and ORDER

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

The issue is whether appellant has established an emotional condition causally related to compensable factors of his federal employment.

In the present case, appellant filed a claim on July 16, 1997 alleging that he sustained an emotional condition causally related to his federal employment. The narrative statements submitted by appellant establish the following allegations as contributing to an emotional condition: (1) disciplinary actions that include a removal from employment in 1991, a notice of removal dated September 15, 1993 that was subsequently reduced to a 14-day and then a 7-day suspension, letters of warning dated June 13 and July 30, 1996, a 7-day suspension dated December 18, 1996 and a predisciplinary hearing dated January 2, 1997; (2) additional administrative actions that include denial of selection for another job, reduction of personnel under appellant as a group leader and monitoring of appellant's work and break time; and (3) a general pattern of harassment by the employing establishment.

In a decision dated October 27, 1997, the Office of Workers' Compensation Programs denied appellant's claim. By decision dated October 28, 1998, an Office hearing representative affirmed the denial of the claim. The hearing representative found that appellant had not established a compensable factor of employment.

The Board has reviewed the record and finds that appellant has established a compensable factor of employment and the case requires further development of the evidence.

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 factors of his federal employment.¹ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

Appellant has identified several disciplinary actions by the employing establishment as contributing to an emotional condition. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵

With respect to the disciplinary actions taken against appellant, it is evident from the record that the 1991 removal constituted erroneous action by the employing establishment. The record indicates that appellant had been removed from the employing establishment effective June 13, 1991 on the grounds that he had violated a "last chance" agreement regarding satisfactory attendance and work habits. An arbitrator's decision dated April 14, 1992, specifically found that appellant did not violate the agreement and, therefore, "the removal action was improper." The hearing representative found in the October 28, 1998 decision that there was no evidence that the employing establishment had violated the agreement, but the issue was whether the action of the employing establishment in removing appellant was proper and the arbitrator's decision clearly finds that it was not. Accordingly, the Board finds that appellant has established a compensable factor of employment.

The evidence regarding the additional disciplinary actions is not, however, sufficient to establish error or abuse. Although the September 15, 1993 notice of removal was reduced eventually to a seven-day suspension, the mere fact that an administrative action is later

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

modified or rescinded does not, in and of itself, establish error or abuse.⁶ The December 18, 1997 seven-day suspension, involving unauthorized use of a telephone, was reduced to a letter of warning, without any admission of fault by the employing establishment.⁷ The record contains no finding of error, admission of error, or other probative evidence that is sufficient to establish a compensable factor with respect to the remainder of the disciplinary actions cited by appellant. With respect to allegations regarding his failure to be selected for a position, or reduction in manpower while he was a group leader, appellant has not submitted sufficient detail or supporting evidence to establish error or abuse by the employing establishment. Appellant has alleged that he was closely monitored and has submitted brief witness statements also asserting that appellant was closely monitored at work. A supervisor's statement indicated that appellant was not timed while on break, but would question him when he had unauthorized absences from his work assignment. The Board cannot find probative evidence of error or abuse in this regard based on the evidence of record.

The Board notes that appellant has characterized the above actions of the employing establishment as harassment. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁹ The record does not contain finding of harassment or sufficient evidence to establish a claim based on harassment in this case.

As noted above, appellant has established a compensable factor with respect to his removal from employment as of June 1991. In a report dated July 17, 1997, Dr. Lindsay A. Levine, a psychiatrist, provided a history that noted appellant was fired from his employment 6 years earlier and then rehired approximately 10 months later. Dr. Levine reported that since that time appellant had developed a hatred for the people involved; the diagnosis was depression with psychotic features, and homicidal ideation and anxiety. He concluded, "the source of [appellant's] anger and feelings of persecution are a direct result of his work environment past and present."

Although not sufficiently detailed to establish his claim, appellant has submitted uncontroverted evidence supporting causal relationship between an emotional condition and a compensable work factor.¹⁰ The case will be, therefore, be remanded to the Office for

⁶ See *Michael Thomas Plante*, *supra* note 5; *Richard J. Dube*, 42 ECAB 916 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

⁷ The Board notes that appellant submitted brief witness statements from coworkers that others have used the telephone without being disciplined; a supervisors statement, however, asserted that other employees using the telephone unauthorized would be disciplined.

⁸ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁹ *Helen P. Allen*, 47 ECAB 141 (1995).

¹⁰ See *Gary L. Fowler*, 45 ECAB 365 (1994).

preparation of an amended statement of accepted facts and referral to an appropriate specialist. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated October 28, 1998 is set aside and the case remanded to the Office for further development consistent with this decision of the Board.

Dated, Washington, D.C.
August 14, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member