

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIAN L. TRACE and U.S. POSTAL SERVICE,
ANNANDALE POST OFFICE, Annandale, VA

*Docket No. 99-1991; Submitted on the Record;
Issued December 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On August 20, 1993 appellant, then a 34-year-old letter carrier, filed a claim for panic disorder, which he related to stress at work. In an accompanying statement, appellant stated that the primary incident that precipitated his condition was the employing establishment's policy of denial of overtime during a given week to any employee on the overtime list who had taken sick leave in that week. He indicated that the employing establishment had established an overtime lists and he was on the twelve-hour route assignment list. Appellant commented that all employees on the list were to get the same amount of overtime but he did not receive any. He noted that he filed a grievance and received 6 hours of overtime pay in a settlement but should have received time and half pay for 60 hours. Appellant contended that the policy of the employing establishment violated the contract agreement between the employing establishment and the letter carriers.

Appellant noted other incidents of stress. He stated that on one occasion, a supervisor was yelling at him to clock out before going to the bathroom after finishing his route, even following him into the bathroom to hurry him. Appellant commented that a female supervisor acted similarly on another occasion, differing only in that she did not follow him into the bathroom but continued to yell at him from the bathroom door. He stated that his ex-wife was harassed on the telephone by a supervisor when she tried to call him on one occasion. Appellant contended that he was singled out for being out of uniform when he wore a sweater or a jacket over his uniform while casing mail. He stated that other employees were casing mail while out of uniform, including one person who was wearing bedroom slippers, but they were not reprimanded. Appellant reported that in 1986 and 1987, when he was an acting supervisor, he would submit his overtime but his supervisor would delete the overtime appellant had entered even though he was entitled to overtime pay.

In response to questions by the Office of Workers' Compensation Programs, appellant described other incidents to which he attributed his condition. He stated that approximately three years previously, he and a female letter carrier disagreed on who would carry a certain route but he carried the mail on that route. Appellant stated that the other letter carrier filed a sexual harassment grievance against him, accusing him of using vulgar language. He denied that he used such language. Appellant claimed that the grievance had been filed in an effort to have him fired. He stated that he responded by filing a grievance against the coworkers fiancé who was a supervisor and was making remarks about appellant's engagement to a woman who was considerably younger, such as asking appellant whether he had changed his fiancée's diaper before coming to work. Appellant indicated that he and the supervisor agreed to mutually drop the grievances. He related that the female coworker subsequently told him that she had been pushed by the postmaster to file the sexual harassment grievance.

Appellant indicated that he participated in an employment involvement work team at the employing establishment with supervisors, the union shop steward and the postmaster. In one meeting, a customer asked appellant if he liked his job. He responded that he hated his job because of the stress placed on him. Appellant related that the postmaster interrupted, telling appellant indirectly that if he hated his job, he should quit. Appellant indicated that he described the conversation later that day to coworkers. He stated that, at the end of the workday, the postmaster called him in, denied that he had told appellant to quit and threatened to sue him. Appellant indicated that he and the supervisor argued until the supervisor changed the subject. He indicated that he was often under pressure to case mail as quickly as possible.

In a November 29, 1993 letter, the current postmaster of the employing establishment, stated that supervisors knowledgeable about the accuracy of appellant's statements were no longer working at the employing establishment. The supervisor commented that there were aspects of appellant's job that could be perceived as stressful such as deadlines, productivity standards and fluctuating workloads requiring daily scheduling adjustments and overtime. She noted that appellant had received an offer of reassignment to a light-duty position to which appellant's physician stated was necessary to reduce stress. The postmaster reported that, during the period appellant claimed the existence of detrimental work factors, there were intermittent periods of staffing shortages which affected appellant's workload.

In a May 16, 1994 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. In a July 10, 1994 letter, appellant requested reconsideration and submitted statements from coworkers in support of his claim. In an October 5, 1994 decision, the Office denied appellant's request for reconsideration on the grounds that he did not submit new relevant evidence nor present new substantive legal arguments. Appellant appealed to the Board. On appeal the Director of the Office made a motion to remand the case for further development, stating that, as appellant had implicated factors of his employment as the cause of his condition, the Office had to make findings on whether any of the factors alleged by appellant were within the performance of duty. In an October 19, 1995 order, the Board granted the motion to remand.¹

¹ Order Granting Remand, Docket No. 95-905 (October 19, 1995).

In a January 16, 1996 decision, the Office rejected appellant's claim on the grounds that the fact of injury had not been established. In an accompanying memorandum, a senior Office claims examiner indicated that appellant's complaint about the denial of overtime because he took sick leave and the earlier incidents when his overtime was deleted while he was an acting supervisor did not occur within the performance of duty. The senior Office claims examiner also found that the abusive language to appellant's ex-wife, the reprimands for being out of uniform, the pressure to clock off at the end of the day, the dispute with a coworker over who would carry a route on a particular day and the argument with the postmaster when appellant stated that he hated his job, were not compensable factors of employment. She found that the pressure for appellant to case mail as quickly as possible and the derogatory statements about appellant's fiancée were compensable factors of employment. The supervisor further indicated that the medical evidence of record did not establish that those incidents caused appellant's emotional condition.

Appellant requested a hearing before an Office hearing representative, which was conducted on September 10, 1996. In a February 17, 1997 decision, the Office hearing representative found that appellant had submitted some medical evidence, which related his condition to the pressure to case and carry more mail. She, therefore, vacated the Office's January 16, 1997 decision and remanded the case for referral of appellant to an appropriate specialist for an examination and second opinion. In a May 16, 1997 decision, the Office found that the evidence did not support that appellant's emotional condition arose from factors of his federal employment that were within his performance of duty. Appellant requested a hearing before an Office hearing representative, which was subsequently changed into a request for a written review of the record. In an August 4, 1998 decision the Office hearing representative found that the medical evidence of record clearly negated any causal relationship between the increase in appellant's workload and his emotional condition. In a March 16, 1999 letter, appellant's attorney requested reconsideration. In an April 20, 1999 decision, the Office denied appellant's request on the grounds that the evidence submitted was irrelevant and, therefore, insufficient to warrant review of the prior decisions.

The Board finds that the case is not in posture for decision.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. 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.² 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

² *Lillian Cutler*, 28 ECAB 125 (1976).

of the Act.³ 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.⁴

Appellant made a general allegation that his emotional condition was due to harassment by his supervisors. The actions of a supervisor, which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁵ Appellant has not submitted collaborative evidence that established that the actions of his supervisors in their interactions with him constituted harassment.

However, even though harassment has not been shown, the evidence of record must be reviewed to determine whether the incidents described by appellant were compensable factors of employment and caused his emotional condition. In this case, the Office found that most of the factors, such as those relating to overtime, or the supervisors efforts to get appellant to clock out, were not compensable factors of employment because they related to administrative actions of the employing establishment. The Office, however, did not fully consider whether the actions of the employing establishment constituted error or abuse. Appellant contended that the denial of overtime in the same week that an employee used sick leave was a violation of the contract between the employing establishment and the postal unions. Appellant submitted statements from one supervisor and one other employee that the employing establishment had a policy of not giving overtime in the same week that an employee used sick leave. He also contended that when he was an acting supervisor, he was entitled to overtime but his superiors deleted his overtime requests and refused to pay him more than eight hours a day. The Office did not consider whether these actions of the employing establishment in denying overtime to appellant were in error.

Appellant claimed that, on two occasions, supervisors yelled at him to clock out before using the bathroom when he returned from his route, on one occasion following him into the bathroom. The employing establishment did not dispute that these incidents occurred as alleged. At the hearing appellant testified that the employing establishment allowed a five-minute period for clean up after delivering mail but the supervisors pushed him to finish because he was on overtime. The Board has held that yelling at an employee is a compensable factor of employment.⁶ Therefore, the actions of the supervisors in yelling at appellant to clock out would

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ *Joan Juanita Greene*, 41 ECAB 760 (1990).

⁶ *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

be a compensable factor of employment. Appellant also contended that supervisors teased him or made insulting remarks on the age difference between him and his fiancée, who later became his wife. The employing establishment did not dispute that the remarks were made and an Office hearing representative found that these remarks constituted a compensable factor of employment.

The Office properly found that some of the factors alleged by appellant were not established to have occurred as alleged or were not compensable factors of employment. Appellant claimed that his postmaster pushed a coworker to file a sexual harassment grievance against him. Appellant, however, did not submit any evidence, particularly a statement from that coworker, which would substantiate his allegation. His argument with his supervisor over whether the supervisor had told him to resign if he did not like his job was not related to appellant's assigned duties but was a personal dispute with the postmaster in which each party engaged. It, therefore, did not occur within the performance of duty. Appellant contended that he was reprimanded for being out of uniform when others who were out of uniform were not reprimanded. However, he did not submit any evidence to establish that while some employees were not in complete uniform, he was the only one to be singled out for a reprimand. He described several incidents at the hearing in which a supervisor would tell appellant to come with him and then, when appellant was following, would deliberately stop and allow appellant to run into him and then accuse appellant of assault. Appellant, however, has not submitted witness statements to establish that those incidents occurred as alleged. He also contended that in 1996 he was assaulted while he was in his car in his driveway and warned not to proceed with his case.

Appellant has not established that this incident occurred as alleged or that it was related in any way to the employing establishment or the performance of his assigned duties.

Dr. Ellen LaBelle, a Board-certified psychiatrist, treated appellant and diagnosed panic disorder and concluded that his panic attacks were caused and aggravated by the stress of his work. The Office, at the direction of the Office hearing representative, referred appellant to Dr. Leonard S. Goldstein, a Board-certified psychiatrist, who, in a May 2, 1997 report, diagnosed post-traumatic stress syndrome. He indicated that the statement of accepted facts given to him showed only one accepted factor of employment, an increased workload. Dr. Goldstein concluded that the post-traumatic stress disorder could not be explained on the basis of this accepted factor. He added, however, that some of the factors that were found not to have occurred or not to be compensable could have caused a post-traumatic stress disorder. Dr. Goldstein commented that if there was discrimination at the employing establishment, if threats were made and threats of firing were tangible. His report was based on an incomplete and inaccurate statement of accepted facts, which listed only one compensable factor of employment. The evidence of records shows that the Office did not accurately identify some factors as compensable factors of employment and did not fully develop the record to determine whether the Office erred in denying appellant overtime.

The case will be remanded for further development. On remand, the Office should then prepare a new statement of accepted facts and refer appellant, together with the statement and the case record, to an appropriate specialist for an examination and diagnosis of appellant's condition. The specialist should be asked whether appellant's diagnosed condition is causally related to compensable factors of employment. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs, dated April 20, 1999 and August 28, 1998, are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
December 5, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member