

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD C. LEDBETTER and U.S. POSTAL SERVICE,
LAGOON PARK POST OFFICE, Montgomery, AL

*Docket No. 99-2343; Submitted on the Record;
Issued January 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On September 4, 1998 appellant, then a 50-year-old custodian, filed a claim for an occupational disease (Form CA-2) alleging that in June 1992 he first realized that his emotional condition was caused or aggravated by factors of his employment. Appellant's claim was accompanied by medical and factual evidence.

In a letter dated September 28, 1998, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised appellant to submit factual and medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

In response, the employing establishment and appellant submitted factual evidence.

By decision dated March 9, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a May 7, 1999 letter, appellant requested reconsideration of the Office's decision accompanied by factual evidence.

By decision dated June 18, 1999, the Office denied appellant's request for modification based on a merit review of the claim.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. 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.² To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual 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.³

Appellant has alleged several incidents, which he asserts constituted harassment and discrimination by the employing establishment. Specifically, appellant alleged that Paul Kennedy, his supervisor, struck him in his stomach on several occasions. Appellant also alleged that he was verbally abused by Mr. Kennedy regarding himself and his family and neighborhood. In addition, appellant alleged that Mr. Kennedy circulated a confidential statement regarding a complaint filed with the Equal Employment Opportunity Commission (EEOC) that was given by appellant to other employees. Appellant further alleged that on several occasions Mr. Kennedy threw a stack of mail that hit him. If established, these alleged incidents would provide coverage under the Act.

Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.⁴ Mere perceptions or feelings of harassment, however, are not compensable. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment with probative and reliable evidence.⁵ Appellant failed to provide any such probative and reliable evidence in the instant case.

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

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

In support of his allegation, appellant submitted an April 12, 1999 affidavit from Gail McConnell, his coworker, revealing that she witnessed Mr. Kennedy talk very ugly and rudely to appellant. Appellant also submitted an April 16, 1999 affidavit from William B. Arant, a coworker, indicating that appellant was cursed on the mailroom floor in front of employees by Mr. Kennedy. Mr. Arant stated that appellant's family members were called low lives. Further, appellant submitted an affidavit of the same date from M.L. Hall, his coworker, describing a situation where Mr. Kennedy pitted two employees, Carol Shaw and Larry Green, against one another and that he treated appellant in the same manner. Finally, appellant submitted another affidavit of the same date from Charles E. Nichols, his coworker, revealing that Mr. Kennedy verbally abused him. The affidavits submitted by appellant failed to provide any specific details and the dates of these incidents.⁶

Mr. Kennedy denied appellant's allegation of harassment and discrimination in an undated narrative statement. In response to appellant's allegation that he circulated a confidential statement, Mr. Kennedy stated that he eliminated any reference to any employee who was involved in the investigation of two employees when he discussed the findings of the investigation with these employees. In response to appellant's allegation that he was verbally abusive towards him, Mr. Kennedy stated that, previously, he and appellant had a good relationship and that they did and said things that appellant now had taken out of context. Regarding comments about appellant's neighborhood, Mr. Kennedy noted an incident where appellant broke the windshield on a car of teenagers who wanted his son to come out of the house. He also noted incidents where appellant's son's bicycle was stolen out of his yard and his son's tennis shoes were stolen. Mr. Kennedy stated that he told appellant that as long as he lived in this neighborhood these types of incidents would take place. He also stated that he suggested appellant move from his neighborhood because his son was skipping school and hanging out half the night. Mr. Kennedy further stated that when he used the word "son of a bitch" appellant and coworkers laughed at him. He denied poking appellant in the stomach. Mr. Kennedy stated that appellant's stomach protruded over his belt more than most people and that he would point at appellant's stomach with his finger and stated "suck it in." He further stated that he was helping a clerk distribute some bundles of third-class mail and that he threw one bundle without looking and it hit appellant who had come up unexpectedly. Mr. Kennedy explained that the bundle weighed less than one pound and was not rigid. He also stated that this happened during a time when appellant was angry at him. The Board finds that in light of Mr. Kennedy's explanations, appellant has not established his allegations.

Appellant has also alleged that Mr. Kennedy required him to perform tasks outside the scope of his job description. The Board has recognized that error or abuse by the employing establishment in an administrative or personnel matter may constitute a compensable factor of employment if there is corroborating evidence establishing error or abuse.⁷ In this case, however, appellant has not substantiated his claims of error or abuse. In response to appellant's allegation, Mr. Kennedy explained, in his narrative statement, that appellant was required to

⁶ The Board notes that appellant submitted a federal court order staying the proceedings concerning his harassment complaint against the employing establishment until a decision had been rendered by the Office in response to the filing of a motion to dismiss by the employing establishment.

⁷ See *Frederick D. Richardson*, 45 ECAB 454 (1994).

perform additional tasks because the part-time custodian position was eliminated after Herbert Bell left this position. Mr. Kennedy stated that he explained this nationwide policy to appellant. Inasmuch as there is no evidence demonstrating that any tasks assigned appellant were inappropriate, the Board is unable to find that appellant's job assignments were made in error or were abusive.

Appellant has not provided the specific information necessary to establish any compensable factors of employment under the Act and, therefore, has not established that he sustained an emotional condition in the performance of duty. In view of this decision, it is unnecessary to consider the medical evidence to determine whether appellant's emotional condition was causally related to compensable factors of his employment.⁸ Such factors must be identified and established before it can be determined, through medical evidence, whether a claimant's disability is causally related to such factors.

The June 18 and March 9, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 3, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).