

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DANIEL C. PELLOT and U.S. POSTAL SERVICE,  
POST OFFICE, Brooklyn, NY

*Docket No. 00-2591; Submitted on the Record;  
Issued June 15, 2001*

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DECISION and ORDER

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

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

Appellant filed a traumatic injury claim alleging that he sustained an emotional condition causally related to an incident involving his supervisor, Jose Fernandez, on April 12, 1999. Appellant alleged that Mr. Fernandez threatened him on the above date and caused him mental stress and anxiety. On the reverse side of the claim form, Mr. Fernandez controverted the claim and denied threatening appellant, and further stated that he had only been performing his supervisory duties.

In a narrative statement dated April 22, 1999, Mr. Fernandez indicated that he believed appellant filed his emotional condition claim based on past discussions the two have had regarding appellant's attendance and completion of work duties. He stated that, on one occasion, he discussed with appellant his attendance and advised him of "how damaging he could be for his career," and stated that appellant's attendance however did not improve and he received written warning. Appellant did not allege that this incident caused or contributed to his condition and Mr. Fernandez did not make reference to the incident alleged by appellant to have occurred on April 12, 1999.

In a letter dated May 17, 1999, the Office of Workers' Compensation Programs informed appellant that additional evidence was necessary to make a determination, including a statement outlining the employment factors believed to have caused his claimed emotional condition and medical evidence.

In a decision dated November 17, 1998, the Office denied the claim, finding that appellant had not established a compensable work factor as contributing to an emotional condition.

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.

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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

In this case, appellant alleged that Mr. Fernandez, his supervisor threatened him on April 12, 1999 however he did not describe the incident or outline any employment factors or conditions believed to have caused the condition. Appellant was requested by the Office to submit evidence supportive of his claim, however, no factual evidence was submitted to support that the incident occurred as alleged.

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.<sup>4</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>5</sup>

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>5</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

Appellant has not submitted probative evidence with respect to an allegation of harassment or discrimination by his supervisor on April 12, 1999. Appellant did not submit Equal Employment Opportunity findings, witness statements or other probative evidence. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>6</sup>

The decision of the Office of Workers' Compensation Programs dated November 17, 1999 is affirmed.

Dated, Washington, DC  
June 15, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member

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<sup>6</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).