

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAWTHORN MIREE, JR. and U.S. POSTAL SERVICE,  
POST OFFICE, Cinti, OH

*Docket No. 00-1306; Submitted on the Record;  
Issued March 28, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on January 5, 2000.

Appellant, a 33-year-old clerk, filed a notice of occupational disease on April 17, 1999 alleging that he developed post-traumatic stress disorder due to harassment, unjust persecution and denial of promotions. The Office denied his claim by decision dated July 15, 1999. Appellant requested reconsideration on December 30, 1999. The Office declined to reopen appellant's claim for consideration of the merits by decision dated January 5, 2000.

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable; however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.<sup>1</sup>

Appellant attributed his emotional condition to the fact that he was denied promotions by the employing establishment. The Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer is not a compensable factor

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

of employment under the Federal Employees' Compensation Act, as these actions do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>2</sup>

Appellant also attributed his emotional condition to the fact that his job was monotonous and boring. The Board has held that an employee's dissatisfaction with working in an environment which he considers to be tedious, monotonous, boring or otherwise undesirable constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>3</sup>

Appellant alleged in August 1998 the employing establishment attempted to fire him without "any vindicable reason." The record indicates that appellant was involved in a dispute with a supervisor, Tom Pfetzer, regarding a newspaper. Appellant alleged that Mr. Pfetzer forcefully removed his newspaper. The employing establishment asserted that appellant grabbed Mr. Pfetzer in an attempt to reclaim the paper and issued a notice of proposed removal on August 12, 1998 based on his physical contact with a supervisor.

Appellant further submitted an arbitration finding on an Equal Employment Opportunity Commission complaint dated August 1, 1997. The arbitrator found that the employing establishment had improperly issued appellant a 14-day suspension and reduced this disciplinary action to a letter of warning. The arbitrator found that the employing establishment had pursued a sexual harassment claim against appellant on the basis that a supervisor overheard remarks, but that the woman involved had not felt harassed nor filed a claim regarding the remarks. He concluded that the 14-day suspension based on the alleged sexual harassment was inappropriate and Orwellian.

Appellant also alleged that he received an unfair performance evaluation and that he was denied placement in the associate supervisor program. Regarding appellant's allegations that the employing establishment engaged improper disciplinary actions and issued unfair performance evaluations, 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>4</sup> Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>5</sup> As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment

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<sup>2</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>3</sup> *See David M. Furey*, 44 ECAB 302, 305-06 (1992).

<sup>4</sup> *See Janet I Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 55, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>5</sup> *Id.*

erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>6</sup>

In this case, appellant has submitted evidence that the employing establishment acted unreasonably in the issuance of the 14-day suspension and has established a compensable factor of employment. However, appellant has not submitted evidence establishing error or abuse on the part of the employing establishment in the remaining alleged employment factors.

Appellant alleged harassment through the denial of promotions. 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>7</sup> As appellant did not establish that he was improperly denied promotions he has failed to establish that employing establishment harassed him through these denials.

As appellant has established a compensable factor of employment, the improper issuance of a 14-day suspension, the Board must consider the medical evidence. To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

In this case, appellant submitted a report dated April 15, 1999 from Dr. Robert M. Simms, a Board-certified psychiatrist, who diagnosed post-traumatic stress disorder and noted that appellant attributed his condition to job stress. However, Dr. Simms did not mention the accepted factor of employment, the improper suspension and therefore his report is not sufficiently factually detailed to meet appellant's burden of proof.

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<sup>6</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>7</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>8</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>9</sup> *Id.*

Appellant also submitted a report from a physician's assistant dated October 16, 1995. Section 8101(2) of the Act<sup>10</sup> provides that the term "physician" does not include physician's assistants. As this note was not signed by the physician it has no probative value in establishing appellant's claim.<sup>11</sup>

As appellant has failed to submit the necessary medical evidence to establish a causal relationship between his diagnosed condition of post-traumatic stress disorder and his accepted factor of employment, he has failed to meet his burden of proof and the Office properly denied his claim.

The Board further finds that the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Office denied appellant's claim for an emotional condition by decision dated July 15, 1999. Appellant requested reconsideration on December 30, 1999 and submitted additional new evidence. By decision dated January 5, 2000, the Office declined to reopen appellant's claim for consideration of the merits.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>12</sup>

In support of his request for reconsideration, appellant submitted a September 8, 1999 letter of warning, which was expunged from his personnel file. Appellant has alleged an additional employment factor of further improper disciplinary action. This allegation constitutes relevant and pertinent new evidence not previously considered by the Office. Therefore, the Office should have considered this evidence on the merits.

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<sup>10</sup> 5 U.S.C. §§ 8101-8193, 8101(2).

<sup>11</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>12</sup> 5 U.S.C. §§ 10.609(a) and 10.606(b).

The decision of the Office of Workers' Compensation Programs dated January 5, 2000 is hereby set aside and remanded for further action consistent with this opinion. The July 15, 1999 decision of the Office is affirmed as modified.

Dated, Washington, DC  
March 28, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member