

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD JONES and U.S. POSTAL SERVICE
POST OFFICE, Los Angeles, CA

*Docket No. 02-780; Submitted on the Record;
Issued January 9, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of his federal duties.

On April 6, 2001 appellant, then a 40-year-old mail clerk filed an occupational disease claim alleging that his employment duties caused him to suffer from depression, stress and nerves.

In a May 10, 2001 letter, the Office of Workers' Compensation Programs requested more information from appellant as to the specific events that led to his medical condition.

In a June 29, 2001 letter appellant responded that in January 2000 supervisor Susan Smith said she was going to "get [appellant] out of the [employing establishment]." According to appellant he had signed an affidavit on behalf of a coworker, Kelly Douroux, that indicated Ms. Smith made a derogatory remark about Mr. Douroux. This led Ms. Smith to say she was going to get appellant out of the employing establishment, causing stress and depression and his blood pressure to become uncontrollable. According to appellant, going to work became very hard and he received two letters of warning for excessive absenteeism because his immediate supervisors, Susan Pedland and Sharon West, worked under Ms. Smith.

Appellant further alleged that in June 2001 Sharon Pedland walked by him and said sarcastically "Are you going to sleep today?" Appellant wrote that a coworker named Lito told him that his supervisors were watching him from behind an OTR. Appellant noted that he filed an EEO complaint against Ms. Smith.

Appellant submitted a copy of an Equal Employment Opportunity (EEO) grievance that alleged management refused to change his sick leave from absent without leave (AWOL) status, even though he was on restricted sick leave. He further stated that Ms. Penland took him off the floor to receive a reissued removal letter in front of other employees. He wrote that he asked

three times that his union steward be present when he received the removal letter but his request was denied.

In an August 1, 2001 statement, Mr. Douroux said that he worked with appellant who was very helpful to him in an EEO case. According to Mr. Douroux, appellant was constantly harassed. Appellant's light-duty position was taken away from him and he had several disciplinary actions against him. Mr. Douroux wrote that he also noticed that appellant's appearance changed and his attitude was no longer positive. Mr. Douroux stated that he knew what appellant was going through because he too had been a target of Shirley Smith.

In an October 18, 2001 letter, the Office requested a response to appellant's allegations from the employing establishment.

In a November 23, 2001 letter, the employing establishment responded. Ms. Penland denied making a sarcastic remark to appellant in June 2001, pointing out that appellant stopped working in April 2001. The supervisor denied watching appellant from behind an OTR, and said that appellant never asked for a union steward when Ms. Penland pulled him off the floor. Appellant was issued two letters for excessive absenteeism because the first letter had incorrect dates. Appellant received a 14-day suspension due to excessive absenteeism and AWOL. In a November 29, 2001 letter, Shirley Smith denied saying that she was going to fire appellant and she reiterated that the removal letters were a result of appellant's absenteeism.

In a December 27, 2001 decision, the Office found that appellant did not establish his allegations and that the dismissal letters were administrative duties and therefore were not in the performance of duty.

The Board finds that appellant has not established that he sustained an emotional condition in the performance his federal duties.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

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 employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Regarding appellant's allegations that he was improperly disciplined and unreasonably monitored, the Board finds that these allegations pertain 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.⁷ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties, and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁸ The Board has held, however, that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether employing establishment personnel erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ Appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse with respect to these administrative matters. The witness statement by Mr. Douroux was insufficient because it was too general. Mr. Douroux said that appellant was harassed but he did not describe any specific instance of harassment that he witnessed or heard. Appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

The mere fact that personnel actions, such as dismissal letters, were later modified or rescinded, does not in and of itself, establish error or abuse.¹⁰

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁸ *Id.*

⁹ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁰ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ However, 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.¹² In the present case, the employing establishment supervisors denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.¹³ Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided insufficient evidence, such as witness statements, to establish that the specific statements actually were made or that the actions actually occurred.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹⁵

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The December 27, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member