

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOM MARTIN and U.S. POSTAL SERVICE,
POST OFFICE, West Yellowstone, Mont.

*Docket No. 95-2913; Submitted on the Record;
Issued April 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

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

On June 6, 1994 appellant, then a 40-year-old postmaster, filed an occupational disease claim, alleging that he sustained employment-related stress of which he first became aware during the summer of 1993 and which he realized was employment related on March 15, 1994. In a supplemental statement appellant listed the following as causative factors of his claimed condition: he was placed in a new position as a postmaster without adequate training; he was unable to meet the requirements of his position such as daily, weekly and monthly reporting requirements, accounting procedures, and operational procedures which caused him frustration and stress; he was improperly denied a detail to another post office in Reno, Nevada; he worked in an environment with three long-standing clerks who questioned every decision he made, *e.g.*, scheduling, annual leave usage, express mail routing, duty assignment, etc.; the influx of additional residents in the summer caused stress; the employing establishment improperly required him to undergo a fitness-for-duty examination and mandated that he participate in Employment Assistance Program (EAP) counseling at his expense within the guidelines of a Performance Improvement Plan (PIP); he was placed on forced administrative leave on February 27 1994; general stress from being the focus of a disciplinary action by the employing establishment; and emotional trauma caused by the publication of allegedly defamatory information in the local newspaper, including that the appellant may be charged with sexual harassment and was dismissed by the employing establishment, with comments from S. Gay Schroff, District Manager of Human Resources, at the employing establishment.

A review of the record discloses the following pertinent facts: on February 6, 1993, appellant assumed the position of postmaster at the West Yellowstone post office (WYPO). On December 13, 1993 appellant was notified by his supervisor, Don Ellis, that one of the clerks had lodged complaints concerning the operation and management of the WYPO. In December 1993 Gregory Wojtanowicz, a postmaster, observed the WYPO and provided a report dated

December 24, 1994 concerning the working environment and operations. On January 4, 1994 appellant attended a meeting with Mr. Ellis, Ms. Schroff, and Claire Brazzington ostensibly to discuss a strategy for addressing problems at the WYPO. Between January 5 and 8, 1994, appellant and his staff met with Mr. Yei of EAP to clarify the exact nature of the problems at the WYPO and to improve communications. On January 24, 1994 a Function Four Review of the WYPO was conducted. In early February 1994 appellant was advised to report to Ms. Schroff, who requested that he sign an agreement indicating that he was aware of the problems at the WYPO and would attempt to correct them; he refused to sign this document. On February 9, 1994 appellant was presented with a PIP with specific comments and instructions concerning his job performance at the WYPO. On this date, appellant also received a letter of warning instructing him to attend EAP counseling sessions until further notice and to sign a release for information from the EAP. On February 15, 1994 appellant was advised not to attend group EAP sessions. On February 27, 1994 appellant was placed on permanent administrative leave. On February 16 and 23, and March 1, 1994, appellant signed releases of EAP information for the employing establishment. On March 15, 1994 the Postal Inspection Officer assigned to appellant's case, submitted a final report of his investigation. In March and April 1994 appellant's grievances concerning his PIP and the letter of warning were denied. On June 6, 1994 appellant was advised that the employing establishment intended to remove him from service. On July 12, 1994 appellant received a letter demoting him from his position as postmaster. On July 26, 1994 appellant was instructed to report to the Bozeman post office for work as a clerk. On November 29, 1994 the Merit Systems Protection Board (MSPB) upheld appellant's removal from his position on the grounds that he created an environment of deliberate harassment and intimidation and violated time and attendance procedure.

In a decision dated November 18, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he failed to establish that the claimed condition arose in the performance of duty. On August 17, 1995 the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to establish a basis for modification of the prior decision.

The Board has carefully reviewed the entire record in this case and finds that it is not in posture for a decision and must be remanded for further evidentiary development.

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 Federal Employees' Compensation Act. Where 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 factors such 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 desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage

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

will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² 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.³

In the instant case, appellant has identified both compensable and noncompensable factors of his federal employment under the Act. Initially, the Board notes that appellant complaints concerning his training, or lack thereof, address administrative matters which are not covered under the Act unless the evidence discloses that the employing establishment acted unreasonably or abusively.⁴ There is no such evidence in relation to this issue in this case. Similarly, appellant's complaint that he was not allowed to go on a detail to Reno, Nevada falls within the category of an administrative matter. As appellant has not demonstrated abuse or error by the employing establishment, this factor is not compensable and any stress is considered self-generated. Appellant made a general assertion that he was caused stress by the influx of summer residents during 1993. However, he does not cite any specific incidents which caused him stress or otherwise substantiate this assertion. Therefore, this is not a compensable factor of his federal employment.

Appellant's complaints that the WYPO clerks questioned all of his decisions, that the employing establishment improperly issued him a letter of warning and placed him on a PIP, that the employing establishment improperly required him to participate in EAP counseling sessions, and that the employing establishment improperly removed him from his position as postmaster are all related to the employing establishment's exercise of administrative actions and unless error or abuse is shown on the part of the establishment, they are not compensable. The Board has held generally, injuries sustained during investigations into alleged illegal or improper acts are not within the performance of duty.⁵ In this case, appellant was accused of creating a hostile working environment which led to the employing establishment's administration of the aforementioned disciplinary actions. The questions posed by the WYPO staff were due, in part, to appellant's request that they violate employing establishment policy in the performance of their duties. Inasmuch as appellant's conduct violated employing establishment policy and since there is no evidence that the employing establishment erred or acted abusively in taking the steps that were taken as evidenced by MSPB's affirmance of appellant's removal from his position as postmaster and other documentation by the postal inspector's office, appellant's complaints are not compensable under the Act.

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on reconsideration.*, 42 ECAB 566 (1991).

⁴ *Mildred D. Thomas*, 42 ECAB 888 (1991).

⁵ *Arthur F. Hougens*, 42 ECAB 455 (1991); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Appellant, however, has identified two compensable factors of employment under the Act. Appellant indicated that his stress first arose during the summer of 1993, long before the disciplinary actions discussed above. He reported that he suffered from stress due to his inability to properly prepare reports required in his position, conduct the daily operation of the post office and adhere to proper accounting procedures. These tasks fall within the parameters of appellant's regularly assigned duties and predate any improper conduct established in the record. Consequently, any emotional condition arising from appellant's performance of these duties would be compensable under the Act.⁶

In addition, appellant contended that he suffered from stress due to information published in the local newspaper without prior notice of the content to him and which was in violation of the employing establishment's policy. A review of the record reveals three articles concerning appellant's dismissal as postmaster of WYPO, "*Stalking Law Brought Inference to Harassment Charges*," "*Postmaster's Attorney Responds to Allegation of Dismissal*," and "*Postmaster dismissed from his Duties*." In a *Pocket Guide to Media Relations* and in a memorandum dated June 5, 1987, the employing establishment stated that "USPS communication policy is to *not* announce, comment on or to confirm or deny any administrative action taken with regard to postal employees. Nor do we comment publicly – or otherwise – on any aspect of a personnel-related matter except under the following clearly defined circumstances." The memorandum indicated that comments could be made only if the employee had been arrested either as a result of a postal investigation or by outside authority, but remarks would be restricted to name, age, time in service, position and facts of the arrest and charge; and when in the opinion of the postal management it was in the best interest of the postal service. The memorandum then reiterated that the employing establishment should not issue a release or statement in cases of adverse administrative actions or matters associated with issues under review. In the present case, Ms. Schroff, in her capacity as manager of human resources, issued detailed comments in two of the articles printed concerning appellant's removal from his position, allegedly for sexual harassment. In fact, one article is the publication of a letter from her in response to the letter by appellant's attorney which was published. In addition, the author of the first article printed confirmed that Ms. Schroff was one of his sources and had confirmed certain information obtained from other sources outside the employing establishment. As the information published in the newspaper appears to be in violation of employing establishment policy, appellant may have demonstrated error by the employing establishment which would make stress related to this incident compensable. Since the memorandum provided by appellant was written in 1987 and is not contemporaneous with the publication of the newspaper articles, the case must be remanded for further development of the evidence relevant to this issue. On remand, the Office should determine what the employing establishment policy was at the time of the media publication and dissemination of information. After such further development as it deems necessary, the Office should issue a *de novo* decision addressing both compensable factors of employment involving appellant's performance of his duty as identified above and his contention that he developed stress in relation to the aforementioned published articles.

⁶ *Cutler, supra* note 1.

The decisions of the Office of Workers' Compensation Programs dated August 17, 1995 and November 18, 1994 are hereby set aside and this case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
April 21, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member