

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT A. MARTIN and U.S. POSTAL SERVICE,  
POST OFFICE, Scottsdale, Ariz.

*Docket No. 96-623; Submitted on the Record;  
Issued April 22, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

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

On February 15, 1994 appellant, then a 58-year-old letter carrier, filed an occupational disease claim alleging that he sustained an emotional condition causally related to factors of his employment. In written statements appellant attributed his emotional condition to being harassed by his supervisors, being threatened with disciplinary action for taking too long to complete his tasks, having to drive a postal vehicle in heavy traffic which "nearly caused some accidents", having his routes changed with the addition of an afternoon collection, having a change in his work time, being dissatisfied with the allocation of overtime, believing that the employing establishment was attempting to get rid of older higher-wage employees by offering early retirement and being required to work longer workdays.

In a letter dated February 4, 1994, Dr. Douglas Lakin, a Board-certified internist, stated that appellant was unable to return to work for two months due to a newly diagnosed panic disorder associated with severe abdominal pain. He provided no opinion as to the cause of appellant's condition.

In a report dated March 8, 1994, Dr. Scott Idzorek, a Board-certified psychiatrist, provided a history of appellant's condition. He stated that there were sufficient stresses at work that were adversely affecting appellant including work expectations for letter carriers, being required to drive in heavy traffic and perceived "close calls" in the traffic, trying to meet deadlines, the difficult and demanding style of supervisors, the physical work and energy required to perform his job, and the overtime hours. Dr. Idzorek opined that appellant would be disabled for at least six months.

By decision dated April 21, 1994, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits.

By letter dated November 7, 1994, through his representative, appellant requested reconsideration of the denial of his claim.

By decision dated January 19, 1995, the Office denied modification of its April 21, 1994 decision.

By letter dated August 22, 1995, appellant, through his representative, requested reconsideration of the denial of his claim and alleged that he had been unable to meet his collection deadlines due to heavy traffic. He submitted copies of documents showing the times that he left the employing establishment and the times that he returned from his mail route.

By letter dated September 22, 1995, the Office requested that the employing establishment submit additional information regarding appellant's position.

In a letter dated October 31, 1995, two of appellant's supervisors stated that appellant's work starting time had been changed because he had bid on a route with a different starting time and that a collection was added because that particular route was evaluated at less than eight hours of work. They stated that most of appellant's deliveries were made to quiet residential streets. The supervisors noted that appellant had alleged that supervisors criticized his performance but that criticism had occurred many years ago by supervisors who no longer worked at the employing establishment. They stated that current records did not show a repeated problem with meeting the collection route schedule within appellant's eight-hour shift. Regarding appellant's allegation of traffic close calls, they noted that appellant had not been involved in any motor vehicle accidents and had not mentioned any traffic difficulties to his supervisors. They stated that there were a couple of busy intersections on appellant's route but most of his delivery route was residential. The supervisors denied appellant's allegation that his work load had increased. Regarding his dissatisfaction with the allocation of overtime, they stated that appellant was on the "own assignment" overtime list which meant that he was permitted to work whatever overtime hours were needed to finish his assignment and the labor agreement concerning allocation of overtime hours did not apply to the "own assignment" employees. They noted that appellant worked very little overtime and had averaged less than one hour of overtime per week in the last two years.

By letter dated November 2, 1995, an employing establishment representative stated that appellant had bid for a route with residential deliveries and collections and that the first six and one-half hours of his shift involved casing the mail and delivering it and the final one hour and ten minutes was spent driving to mail receptacles and collecting the deposited mail. The representative stated that the residential deliveries were along quiet streets and that the collections involved travel between shopping centers and that the focus of appellant's complaints appeared to concern the collection portion of his route. The representative stated that collections did not have deadlines and that if there were factors such as rain or heavier mail volumes a carrier could submit a request for overtime or assistance. The representative stated that the carrier was expected to stop at each mail receptacle after the collection deadline time posted for the customers, *i.e.*, the deadlines were for the customers, not the carriers. The representative

stated that the employing establishment did not understand appellant's reference to huge amounts of traffic and noted that the streets could be busy at times but that the streets were not inherently dangerous nor was there any evidence to support appellant's description of traffic close calls. The representative concluded that appellant's description of employment factors was not accurate.

By decision dated November 13, 1995, the Office denied modification of its April 21, 1995 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition causally related 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 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

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.<sup>5</sup> 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

<sup>5</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

Regarding appellant's allegations that the employing establishment changed his work starting time, did not allocate overtime to his satisfaction, and encouraged early retirement for older higher-wage employees, 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>7</sup> Although the handling of such matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>8</sup> However, the Board has also found 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 the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>9</sup> In this case, the employing establishment has denied appellant's allegations regarding these matters and there is insufficient evidence to establish that the employing establishment erred or acted abusively or unreasonably in the handling of these administrative matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that the employing establishment unfairly added a mail collection to his route, the employing establishment stated that a collection was added because that particular route was evaluated at less than eight hours of work and the collection was added so that appellant's tasks would equal a complete eight-hour workday. As far as being able to complete this task within his work shift, appellant's supervisors stated that records did not indicate any problem in this regard. Therefore, appellant has not established a compensable employment factor in this respect.

Appellant also alleged that he had been unfairly disciplined by his supervisors for taking too long to complete his tasks. However, the employing establishment denied this allegation and appellant has provided insufficient evidence to establish this allegation as factual. Therefore, this allegation is not deemed a compensable employment factor.

Appellant has also alleged that harassment and discrimination on the part of his supervisors 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.<sup>10</sup> However, for harassment or discrimination to give rise to

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<sup>6</sup> *Id.*

<sup>7</sup> See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>8</sup> *Id.*

<sup>9</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>10</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

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.<sup>11</sup> In the present case, the employing establishment 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.<sup>12</sup> Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has alleged that having to drive his employing establishment vehicle in heavy traffic contributed to his claimed emotional condition. He also stated that he had been unable to meet his collection deadlines due to heavy traffic. However, the employing establishment stated that most of appellant's deliveries were to quiet residential streets and noted that appellant had not been involved in any work-related motor vehicle accidents nor had he complained to his supervisors regarding problems with traffic on his route. The supervisors stated that the collection deadlines were for the customers, not the carriers and that appellant was only required to collect mail from receptacles after the times posted for the customers, not by any particular time deadline. As far as completing the collections within appellant's eight-hour work shift, appellant's supervisors stated that records did not indicate any problem in this regard. Therefore, appellant has not established a compensable employment factor regarding his allegations concerning traffic.

Regarding appellant's allegation that his work load had increased, the employing establishment denied that appellant's work load had been increased and there is insufficient evidence to establish this allegation as factual. Therefore, appellant has not established a compensable factor in this respect.

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.<sup>13</sup>

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<sup>11</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>12</sup> *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).

<sup>13</sup> 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 November 13 and January 19, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
April 22, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member