

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAN STRINGER and U.S. POSTAL SERVICE,
POST OFFICE, New Rochelle, N.Y.

*Docket No. 96-992; Submitted on the Record;
Issued April 7, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record and finds that appellant did not establish that he sustained an injury in the performance of duty.

On May 29, 1995 appellant, then a 46-year-old postal carrier, filed a claim¹ alleging that a racist work environment, retaliatory activity, and harassment caused stress and anxiety. He had stopped work on May 8, 1995. In support of his claim, he submitted statements in which he alleged that a transfer request had not been handled properly, that his work schedule was changed improperly, that a letter of warning was improperly placed in his personnel file, that he was discriminated against for activities involving a class complaint to the Equal Employment Opportunities Commission (EEOC) regarding management's response to the distribution of offensive literature at the employing establishment, and that he received unequal punishment regarding the letter of warning.

He also submitted reports from Dr. James A. Taylor, a Board-certified psychiatrist who, in a May 31, 1995 report, advised that appellant could not return to work. In a July 10, 1995 report, Dr. Taylor stated that appellant had no physical restrictions, and in a July 12, 1995 report diagnosed adjustment disorder and recommended that appellant not work for the period May 19 to July 11, 1995.

The employing establishment submitted a letter of warning dated April 25, 1995 that was issued to appellant for falsification of a sick leave request form on December 24, 1994.

¹ Appellant submitted a CA-1 claim form that was processed by the Office of Workers' Compensation Programs as an occupational disease claim.

By letters dated July 11 and 31, August 21 and October 20, 1995, the Office informed appellant of the type medical evidence needed to support his claim. Appellant submitted nothing further.

By decision dated November 17, 1995, the Office denied the claim, finding that appellant had not established that he sustained an injury in the performance of duty.

To establish that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² 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 appellant.³

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are related as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must first make findings of fact regarding which working conditions are deemed compensable factors of employment.⁶ As a general rule, absent a showing of error or abuse, actions of the employing establishment in administrative or personnel matters are not considered compensable factors of employment.⁷

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *See Margreate Lublin*, 44 ECAB 945 (1993).

In this case, regarding appellant's contention that the employing establishment improperly handled a transfer request, the record indicates that the EEOC found that he failed to meet his burden of proving illegal employment discrimination. While an EEOC investigative report regarding his complaint about a schedule change is in the record, it does not contain a conclusion. Regarding his contention that management improperly responded to the distribution of offensive literature at the employing establishment, the record indicates that, after the postmaster recommended that the two letter carriers who distributed the literature be dismissed, by union-management agreement, this was changed to letters of warning. Appellant was not satisfied with this and, acting as class representative filed the class action suit. The record, however, does not contain an EEOC decision regarding this matter. Furthermore, the findings of other administrative agencies are not determinative with regard to proceedings under the Act, which is administered by the Office and the Board.⁸ Appellant has, therefore, failed to demonstrate error or abuse on the part of the employing establishment regarding these administrative matters and they are not compensable employment factors.⁹

Appellant also alleged that he experienced harassment by management in retaliation for EEOC activities. However, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment did, in fact, occur. Mere perceptions are not compensable.¹⁰ Appellant has not submitted any independent corroborating evidence to establish his allegations of harassment; thus, he has not submitted sufficient evidence to establish that management erred or acted abusively.

⁸ See *Donald E. Ewals*, 45 ECAB 111 (1993).

⁹ See *Margreate Lublin*, *supra* note 7.

¹⁰ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

The decision of the Office of Workers' Compensation Programs dated November 17, 1995 is hereby affirmed.

Dated, Washington, D.C.
April 7, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member