

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KACY L. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, Mich.

*Docket No. 96-1212; Submitted on the Record;
Issued April 21, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On May 9, 1995 appellant, then a 26-year-old letter sorting machine (LSM) operator, filed an occupational disease claim alleging that she sustained depression of a suicidal degree as a result of mental and emotional abuse while in the performance of duty. Appellant indicated that she first became aware of her condition and its relation to factors of her federal employment on February 8, 1995. In a supplemental statement, appellant identified the following as causative factors of her claimed emotional condition: in August 1994, a coworker advised her that she was being compensated at an improper pay rate and despite efforts by appellant and personnel from the union, the paperwork for her proper pay rate was not completed until March 13, 1995; when appellant returned to work in June 1994 after recovering from bilateral neuritis, a work-related injury,¹ she was placed on limited duty because of a "no keying" restriction; the coworker in this area was removed shortly after appellant received this assignment and appellant alleged that she was overworked as a result; appellant was chastised by her former supervisor, Para Caddell and her then acting supervisor, Jefferson J. Hockenberger, in the presence of coworkers concerning a requested schedule change; and on February 8, 1995 appellant alleged that she was humiliated by Ms. Caddell at an award ceremony when all the other employees in Ms. Caddell's section received performance awards and appellant did not.

In support of her claim, appellant submitted a Form 50, notifications of personnel action, dated from April 1991 to March 1995, requests for information from her union steward, David Campbell concerning the improper pay rate and statements from the union president, Dave

¹ Appellant was injured on April 12, 1992. The Office of Workers' Compensation Programs accepted her claim for bilateral neuritis. She received compensation for temporary total disability until March 5, 1994. Appellant was released by her doctor to return to work in a limited-duty capacity on May 28, 1994.

Lenard and Mr. Campbell corroborating the difficulty appellant encountered in trying to have her pay rate corrected. Appellant also submitted medical reports by Dr. Lawrence Koltonow, a psychiatrist and her treating physician, who diagnosed depression of a suicidal degree which was related to appellant being treated in a demeaning manner, being “singled out” and not having any pay increases as promised since September 1994.

The employing establishment submitted statements from Ms. Caddell, Mr. Hockenberger and several coworkers contesting appellant’s recitation of the events related to her allegations of overtime work, the change in her schedule wherein she was disciplined by Ms. Caddell and Mr. Hockenberger in front of coworkers and the award meeting of February 8, 1995.

In a decision dated July 24, 1995, the Office denied appellant’s claim on the grounds that appellant did not establish that she sustained an injury within the performance of duty. In a decision dated December 14, 1995 and finalized December 18, 1995, an Office hearing representative affirmed the Office’s July 24, 1995 decision. By decision dated February 2, 1996, the Office denied appellant’s request for reconsideration and denied merit review of her claim on the grounds that the evidence submitted was repetitive or irrelevant.

The Board finds that this case is not in posture for decision regarding the issue of whether appellant’s depression was sustained in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition. 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 her 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.² When the evidence demonstrates feelings of job insecurity and nothing more, coverage 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.³ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her 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

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁴

In the present case, appellant has substantiated one compensable factor of employment. Most of the incidents identified by appellant as causative factors of her claimed condition are not compensable under the Act. Specifically, appellant expressed dissatisfaction that the coworker who was also working in a limited-duty position stamping mail was removed from that position and thereafter appellant did all the hand-stamped mail by herself. Appellant's complaints are analogous to frustration over not being allowed to work in a particular environment and are therefore not compensable. Moreover, appellant's contention that she was forced to work overtime to keep up with this work is not substantiated by the evidence of record as several of her coworkers and her former supervisors all refute that allegation. As appellant has not substantiated her claim that she was forced to work overtime on a continuous basis due to the reassignment of personnel in her area, this is not a compensable factor under the Act.

Appellant also alleged that she was harassed by Ms. Caddell by being singled out for disciplinary actions in relation to a requested schedule change that she received from Mr. Hockenberger, who was acting supervisor in Ms. Caddell's stead and in not receiving a performance award although many of her colleagues received two awards. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.⁵ Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting his allegations of harassment with probative and reliable evidence.⁶ Appellant failed to provide any such probative and reliable evidence in the instant case as she has not presented any independent or objective evidence to support her version of the alleged incidents. In addition, the identified incidents fall within the category of administrative matters and are not compensable in any case unless appellant demonstrates error or abuse by the employing establishment.

Appellant's allegation that she became depressed due to the employing establishment's failure to correct her pay rate in a timely fashion is a compensable factor under the Act. Appellant's rate of pay is also an administrative or personnel matter and as previously noted, any physical or emotional condition arising in reaction to this matter is not compensable unless the evidence establishes that the employing establishment either erred or acted abusively in the administration of the personnel matter.⁷ A review of the evidence in the record reveals that appellant was being compensated at a Grade 6, Step B in August 1994 when she was advised by a coworker that she was not being compensated at a proper pay rate. In a request dated September 6, 1994, Mr. Campbell, a union steward, confirmed that an error had been made in

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *McEuen*, *supra* note 4.

relation to appellant's rate of pay and submitted a request for further information as to why appellant's step increase had been deferred due to her use of leave without pay (LWOP) while she was out of work due to an approved workers' compensation claim from April 1992 to May 28, 1994. He indicated that appellant's proper pay rate was a Grade 6, Step F as of August 19, 1994. Mr. Campbell made several subsequent requests for a correction of appellant's pay rate. The record also contains Form 50 notifications of personnel action and a computerized Form 50 history display indicating that appellant's step increases were deferred on February 6 and November 13, 1993 and May 14, 1994. On a Form 50 dated March 13, 1995 the employing establishment noted, "PDC will process any necessary salary and/or leave adjustment. Service history sent to PDC. Employee was on OWCP. Step deferrals were given in error and have been removed." As the employing establishment has acknowledged error in the administration of this personnel matter, appellant's emotional reaction to this error cannot be considered self-generated. Thus, this identified incident is a compensable factor under the Act.

As appellant has established a compensable factor of her employment, the Office must base its decision on an analysis of the medical evidence.⁸ Since the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded for that purpose.⁹

The decisions of the Office of Workers' Compensation Programs dated February 2, 1996, December 18 and July 24, 1995 are set aside and the case is remanded for further action consistent with this decision of the Board to be followed by an appropriate decision.¹⁰

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

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Margaret Krzycki*, 43 ECAB 496 (1992); *Norma L. Blank*, 43 ECAB 384 (1992).

⁹ See generally *Dodge Osborne*, 44 ECAB 869 (1993).

¹⁰ The Board notes that any issue relevant to the Office's denial of merit review in its February 2, 1996 decision is moot inasmuch as this case remanded for further proceedings on the merits of appellant's claim.