

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGEL M. RUIZ and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, P.R.

*Docket No. 96-1294; Submitted on the Record;
Issued April 9, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On July 14, 1994 appellant, then a 48-year-old clerk, filed a claim alleging that due to an argument with a supervisor, he got very nervous. In support he provided form reports from his psychiatrist.

By letter dated August 17, 1994, the Office of Workers' Compensation Programs requested additional information including details of the incident alleged, witnesses, outside stress, and prior emotional conditions. Nothing further was received by the Office.

By decision dated September 21, 1994, the Office rejected appellant's claim finding that the evidence of record failed to establish an injury sustained as alleged.

The Office was advised that the decision had been sent to an incorrect address. The Office subsequently vacated the September 21, 1994 decision for further development.

By letter dated April 14, 1995, the Office again requested further factual information about the alleged incident, and it requested details of employment factors implicated in causing appellant's condition. The Office also sought supervisory comments.

Appellant submitted an undated witness statement in Spanish which confirmed that an altercation occurred on July 14, 1994, a coworker's statement indicating that appellant went into the supervisor's office arguing about not having help, and that the supervisor tried to calm him down, another coworker's statement indicating that appellant was yelling at the supervisor in his office, had previously yelled at a female coworker, and ended up taking a Valium, and a supervisor's statement which indicated that appellant was out of control, yelled at a female coworker, yelled at the supervisor, and refused all attempts to calm him down. The supervisor

stated that at all times he was civil towards appellant, that he did not raise his voice, and that he had given appellant assistance two to three times a week.

In response to the Office's request for further information, the employing establishment responded that appellant yelled at a female coworker, that he yelled at the supervisor, that he resisted attempts to calm him down, and that he took Valium and other medications for various alleged ailments. The employing establishment stated that appellant's job was not stressful, that appellant was given ample assistance, that appellant was offered overtime to complete the work he could not finish, but that he turned the offer down.

The Office again requested further information from appellant, but nothing was forthcoming. Appellant did, however, submit medical evidence on form reports and two medical narratives.

By decision dated February 2, 1996, the Office rejected appellant's emotional illness claim finding that he had not established that it occurred in the performance of duty. The Office found that appellant did not establish any compensable factors of employment.

The Board finds that appellant has failed to establish that he developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

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

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially-assigned work duties or to a requirement imposed by

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell supra* note 1.

the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³ 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.⁴ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his or 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 emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁵

When working conditions are alleged as factors in causing 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.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸ Such consideration of the medical evidence submitted is not required here, where appellant has failed to allege any compensable factors of his employment.

In the instant case, appellant has failed to allege any factors of employment which are compensable under the Act. Appellant failed to cite any factors of his employment beyond stating that he argued with his supervisor. Appellant alleged very generally that he had an argument with his supervisor, but no further details regarding subject matter or statements made were provided. His supervisor and two coworkers stated that it was appellant who was yelling

³ *Lillian Cutler* 28 ECAB 125 (1976).

⁴ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

and not the supervisor, and that the supervisor and others tried to calm him down to no avail. While it is well established that verbal altercation with a supervisor or coemployees may constitute a factor of employment, appellant has not submitted sufficient evidence to establish that his supervisor acted in error or abusively or that he was otherwise harassed by his coemployees.⁹ The Board concludes that the evidence of the record supports that the argument was one sided with appellant only being argumentative. An emotional condition arising thusly must be considered to be self-generated, and is not compensable under the Act.

However, the Board notes that overwork has been implicated as a compensable factor of federal employment. As the Office has not evaluated the evidence pertaining to this aspect of the claim, the case will be remanded to the Office for further development, as appropriate, and a *de novo* decision.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 2, 1996 is hereby affirmed, in part, and remanded in part, for further action in conformance with this decision.

Dated, Washington, D.C.
April 9, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ See *Gregory N. Waite*, 46 ECAB 662 (1995).