

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH LONEY and U.S. POSTAL SERVICE,
POST OFFICE, Tulsa, Okla.

*Docket No. 96-1400; Submitted on the Record;
Issued April 2, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

In the present case, appellant filed a claim on May 24, 1994 alleging that he sustained an emotional condition causally related to his federal employment.¹ By decision dated September 16, 1994, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not substantiated compensable factors of employment as contributing to his condition. In a decision dated January 16, 1996, an Office hearing representative affirmed the denial.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to compensable factors of his federal employment.

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 factors of his federal employment.² To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) 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.³

¹ The employing establishment indicated that appellant had filed two previous claims for stress-related conditions, although the record does not contain any information regarding those claims.

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

In his January 16, 1996 decision, the hearing representative reviewed in detail the allegations made by appellant at a June 14, 1995 hearing, and the Board will not repeat them here. As noted by the hearing representative, allegations with respect to harassment or discrimination must be supported by probative and reliable evidence.⁵ In the present case, the record does not contain probative evidence of harassment. There is, for example, a statement from a union representative that a "Labor relations decision" had determined that appellant was harassed by a supervisor in September 1992, but the evidence submitted consists of a settlement agreement that contains no findings of harassment. With respect to Equal Employment Opportunity claims and requests for counseling, the record indicates only that settlements were reached without any findings of harassment or discrimination by the employing establishment. In the absence of any factual findings of harassment or discrimination, or other probative evidence in support of his claim, the Board cannot find a compensable factor of employment based on harassment or discrimination in this case.

Appellant has also alleged incidents involving administrative or personnel matters, such as the failure to timely issue a "dog letter" and the inspection of his route. Although such matters are generally related to employment, they are administrative functions of the employer, rather than duties of the employee.⁶ Administrative or personnel matters will not be compensable, unless there is evidence of error or abuse by the employing establishment.⁷ The Board finds no probative evidence of error or abuse with regard to the issuance of letters or monitoring of appellant's route.

The Board notes, however, that appellant submitted a July 8, 1988 arbitration decision, in which the employing establishment was directed to rescind a proposed removal dated December 9, 1987 for failure to properly perform duties. The arbitrator found that adequate proof did not exist to support the removal. The Board finds that this is sufficient to establish error by the employing establishment in issuing the proposed removal. It is, therefore, a

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Sandra F. Powell*, 45 ECAB 877 (1994).

⁶ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁷ *Jimmy Gilbreath*, 44 ECAB 555 (1993).

compensable factor of employment. In order to establish his claim, however, appellant must also submit probative medical evidence which established causal relationship between an emotional condition and the compensable factor of employment. The medical evidence of record is not sufficient to establish the claim in this case.⁸ In a report dated July 15, 1994, Dr. John D. Chelf, a psychologist, diagnosed post-traumatic stress disorder and major depressive disorder, stating that the conditions stemmed from appellant's tours in Viet Nam. Dr. Chelf briefly noted "pressure from [appellant's] supervisors is very difficult for him to cope with," without providing further detail. In an October 28, 1992 report, Dr. Chelf referred to an incident between appellant and a supervisor while on his route, but, as noted above, the record does not establish a compensable factor of employment with regard to monitoring of appellant's route.

The Board further notes that in a July 15, 1994 response, appellant briefly referred to job activities as contributing to his condition: the pressure of having to get mail delivered by a certain time and to be back in the office by a certain time. To the extent that appellant has implicated his job duties, these would be considered compensable factors if substantiated. Appellant did not provide additional detail regarding the delivery of mail as an implicated factor. Moreover, the medical evidence fails to discuss appellant's job duties and is not sufficient to establish the claim

The decision of the Office of Workers' Compensation Programs dated January 16, 1996 is modified to reflect that appellant has established error in the December 1987 removal from duties, and is affirmed as modified.

Dated, Washington, D.C.
April 2, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ The Board notes that appellant has submitted a July 13, 1994 letter from the Office of Personnel Management advising appellant that his application for disability retirement had been approved. The determinations of other agencies with respect to disability are not determinative of proceedings under the Act, since different issues and standards of proof are involved; *see Stephen R. Lubin*, 43 ECAB 564, 568 (1992)