

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE E. DEVOE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Flint, Mich.

*Docket No. 97-648; Submitted on the Record;
Issued December 4, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On June 25, 1995 appellant, then a 41-year-old letter sorting machine (LSM) operator, filed a notice of occupational disease, claiming that unending workplace tension and stress had caused his hopelessness and anxiety. Appellant explained that he felt that he had wasted his time and energy at work, filing the same grievances, fighting the same battles, again and again, with no resolution.

In support of his claim, appellant submitted an August 1, 1995 report from Dr. Barry Siegel, a Board-certified psychiatrist, who diagnosed long-standing obsessive compulsive tendencies and schizoid personality. Dr. Siegel stated that appellant was making some progress in treatment until the end of 1994 when "inconsistencies and irrationalities" in workplace policy changes threatened to destabilize his delicately balanced schedule and sense of control.

Dr. Siegel listed the following specific situations and incidents: union election activities, changes in parking and entrance/egress arrangements, relocation of the LSM console, and appellant's various interactions with supervisors who threatened to write him up for insubordination, accused him of deliberate sabotage, and watched him "like a hawk." Dr. Siegel concluded that appellant's functional capacity was severely impaired and his work efficacy "unlikely."

Appellant also submitted a July 21, 1995 report from Dr. L.A. Waite, an osteopathic practitioner who stated that he had treated appellant for more than 20 years and was familiar with his ongoing problems of job-related stress and supervisory abuse, which produced a reactive depression requiring many years of psychological treatment and medication. Dr. White added that work factors aggravated and accelerated appellant's condition and contributed to his present disability for work.

On January 25, 1996 the Office asked appellant to describe specific work conditions or incidents that contributed to his illness by identifying the dates, locations, co-workers, supervisors, and required duties, with names, addresses, and telephone numbers of people who could verify his allegations. The Office also asked appellant to provide copies of all relevant documents concerning grievances or other complaints he had filed.

On March 18, 1996 the Office denied appellant's claim on the grounds that the evidence failed to establish that appellant sustained an emotional condition as alleged. The Office noted that appellant's grievance regarding management's delay in processing his claim had initially been denied and that appellant's desire to work at a particular station was not a compensable work factor.

Appellant timely requested reconsideration and submitted a May 2, 1996 report from Dr. Siegel, as well as copies of several grievances he had filed against his supervisor, a statement from a union official, and articles from various union publications regarding the automation of postal operations and elimination of LSM clerks.

On August 22, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office noted that appellant's numerous grievances against his supervisor were unsupported by any evidence that the employing establishment erred in carrying out its administrative functions or abused its personnel procedures.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

Under the Federal Employees' Compensation Act,¹ 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. To establish 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.²

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.³ There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment

¹ 5 U.S.C. §§ 8101-8193 (1974).

² *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

is covered.⁴ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,⁵ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁶

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷ However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.⁹ Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which he claims compensation.¹⁰ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹¹

In this case, the Board finds that appellant has identified no compensable work factors that are substantiated by the record and has failed to establish that the employing establishment either erred or acted abusively or unreasonably in the administration of personnel matters.

First, appellant contends that with the advent and implementation of automated mail-processing systems and the elimination of LSM operations starting in 1992, he has felt threatened by a potential loss of his job, which was exacerbated by his supervisor's actions in assigning him to other clerk duties rather than allowing him to run LSM mail full time. The Board has long held that fear of job loss is not a compensable work factor under the Act.¹²

Similarly, apprehension stemming from technological advances or the desire to prevent such changes cannot be covered as a work factor causing an emotional condition. The rationale is that such feelings are a self-generated reaction to the situation and are not the result of the

⁴ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

⁵ *Sharon J. McIntosh*, 47 ECAB ___ (Docket No. 94-1777, issued August 28, 1996).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁷ *Margreat Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁹ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹⁰ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹¹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

¹² See *Artice Dotson*, 41 ECAB 754, 759 (1990) (finding that appellant's reaction to his proposed removal was not a compensable work factor).

work itself. Therefore, the Board finds that appellant's anxiety over the future of his job is not compensable.

Appellant alleges that his supervisor "many times" violated a long-standing agreement that he would run the LSM as an accommodation to his arthritic knees, a condition which prevented him from standing for more than an hour at a time, and that these violations contributed to his stress. As the supervisor explained to appellant, the abundance of mail that once permitted her to assign appellant to LSM almost full time had diminished greatly because of automation and she had to share the available LSM work among other employees. Further, the agreement itself stated only that appellant would run the LSM as much as possible.¹³

Appellant also contended that his supervisor allowed an employee with less seniority -- one of her "pets" -- to perform his LSM duties. The supervisor explained that this junior employee was required to remain proficient on the LSM and thus had to run the LSM periodically.

Appellant also quarreled with other aspects of management's functions and filed grievances regarding the two above incidents as well as the four-month delay in processing his claim, a supervisor's accusation that he had mis-keyed the LSM, a notation on his assignment sheet that he was to sort zone three mail only, an incident when his supervisor turned off the LSM for a safety talk and then refused to restart it although there was still mail to sort, and an altercation on February 5, 1996 when appellant cursed, threw a mail tray, banged his fist on his supervisor's desk, and walked out, slamming the door.

All except the last grievance were either settled or dropped. The February 5, 1996 incident resulted in a letter of warning to appellant. Appellant's subsequent grievance was resolved by the agreement that if there were no further disciplinary actions of a similar nature required prior to September 1, 1996, the letter of warning would be expunged. The Board finds that none of the grievances establishes error or abuse on the part of the employing establishment in assigning work or administering personnel actions.¹⁴

Basically, appellant has a long-standing mental condition and, starting in late 1994, became increasingly fearful of his future with the employing establishment and frustrated with the manner in which his supervisors operated. While he generally alleged tension and stress at work caused by his co-workers and supervisors, he has provided no corroboration that the employing establishment erred or acted abusively in the administration of personnel matters or that a reaction to specific regular or specially assigned duties caused or aggravated his emotional

¹³ See *Donald E. Ewals*, 45 ECAB 111, 123 (1993) (finding that appellant's emotional reaction to agency reorganizations or to changes in operating procedures are not related to the specific requirements of his regularly or specially assigned duties and therefore do not arise in the performance of duty).

¹⁴ See *Mary L. Brooks*, 46 ECAB 266, 274 (1994) (finding that subsequent modification of personnel actions does not, in and of itself, establish error or abuse on the part of the employing establishment).

condition.¹⁵ Therefore, the Board finds that appellant has not established any compensable work factors under the Act and thus need not consider the medical evidence.¹⁶

Inasmuch as appellant has failed to meet his burden of proof in providing factual evidence supporting his allegations of error and abuse on the part of the employing establishment or his identification of employment factors or incidents alleged to have caused or contributed to his mental condition, the Board finds that the Office properly denied his claim.¹⁷

The August 27 and March 18, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
December 4, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ See *Merriett J. Kauffman*, 45 ECAB 696, 703 (1994) (finding that appellant failed to allege or establish that specific work tasks or requirements assigned to him gave rise to his emotional condition).

¹⁶ See *Dinna M. Ramirez*, 48 ECAB ____ ((Docket No. 94-2062, issued January 17, 1997) (finding that the Board need not consider psychiatric evidence because appellant failed to establish that the employing establishment acted abusively in denying her request for official time).

¹⁷ See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate compensable factors of employment or allegations of error or abuse on the part of the employing establishment).