

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH L. TASSAN and U.S. POSTAL SERVICE,
POST OFFICE, Hollywood, Fla.

*Docket No. 97-904; Submitted on the Record;
Issued December 24, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On June 5, 1996 appellant, then a 48-year-old customer service supervisor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he first realized on December 11, 1995 that his depression was due to his reduction in grade and reassignment as a clerk to a branch where he had previously worked in a supervisory position.

In a report dated May 25, 1996, Dr. Clifford S. Golden, a psychologist, opined that appellant's depression "appeared to have been precipitated by job-related issues."

In a letter dated July 18, 1996, the employing establishment noted that appellant was demoted from customer service supervisor to part-time flexible letter carrier on December 9, 1995 due to unsatisfactory work performance. The employing establishment stated that appellant started psychotherapy on December 13, 1995 with Dr. Golden and was reinstated, per an agreement dated May 1, 1996, as a supervisor on a year's probation.

By decision dated October 11, 1996, the Office denied the claim on the grounds that the evidence did not establish fact of injury. In the accompanying memorandum to the director, the Office found that appellant failed to cite to any compensable factor of employment as disciplinary actions are not considered to be in the performance of duty.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply 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 Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a

requirement imposed by the employment, the disability comes within the coverage of the Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.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. In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his 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.³

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 employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act.⁶ Error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonable in the administration of a personnel matter, may afford coverage.⁷ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸

In the present case, appellant has alleged that he sustained an emotional condition due to his being demoted from a supervisor customer service to part-time flexible letter carrier due to unsatisfactory performance as a supervisor. As noted above, in order to establish his claim appellant must identify compensable factors of employment which contributed to his condition and not all situations that have some connection to employment are compensable. To the extent that appellant has alleged frustration over being demoted from a supervisory to a part-time letter carrier position, this is not a compensable factor because it relates not to his assigned duties but to the desire to work in a particular environment and perform particular duties. If an employee is

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470 (1993).

⁶ *See Norman A. Harris*, 42 ECAB 923 (1991); *Samuel F. Mangin*, 42 ECAB 671 (1991).

⁷ *Kathleen D. Walker*, 42 ECAB 603 (1991).

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

unhappy doing inside work, desires a different job, or broods over the employing establishments' failure to give him the kind of work he desires and he has an emotional condition as a result, this does not establish a "personal injury sustained while in the performance of his duty" within the meaning of the Act.⁹

To the extent that appellant attributes his condition to the employing establishment's decision to demote him for unsatisfactory performance as a supervisor, this does not constitute a compensable factor in this case. Such actions, although generally related to employment, do not relate to any requirements of appellant's regular or specially assigned duties and, therefore, do not arise in the performance of duty.¹⁰

The Board therefore finds that appellant has failed to substantiate a compensable factor of employment. As no compensable factors have been substantiated, it is unnecessary to address the medical evidence.¹¹

The decision of the Office of Workers' Compensation Programs dated October 11, 1996 is hereby affirmed.¹²

Dated, Washington, D.C.
December 24, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁹ See *Dodge Osborne*, 44 ECAB 849 (1993); *Lillian Cutler*, *supra* note 2.

¹⁰ See *Donald E. Ewals*, 45 ECAB 111 (1993).

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

¹² Following the date of the appeal on January 9, 1997, the Office issued subsequent decisions on March 6, and April 17, 1997 pursuant to a February 16, 1997 request for reconsideration. The Board has held that the Office does not have jurisdiction to issue a decision on a request for reconsideration while the case is pending before the Board on the same issue. Accordingly, the March 6 and April 17, 1997 decisions are null and void; see *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).