

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ENRIQUE RODRIGUEZ and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

*Docket No. 97-1045; Submitted on the Record;
Issued December 17, 1998*

DECISION and ORDER

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

The issue is whether appellant has met his burden to establish that he sustained an emotional condition causally related to factors of his federal employment.

The Board has duly reviewed the case record and finds that appellant has failed to establish a factual basis for his claim that he sustained an emotional condition causally related to factors of his federal employment.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially-assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation 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

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office of Workers' Compensation Programs or some other appropriate fact finder must make a determination as to the truth of the allegations.³ The issue is not whether the claimant has established harassment or discrimination under standards applied

¹ *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

² *Michael Ewanichak*, 48 ECAB ____ (Docket No. 95-451, issued February 26, 1977); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Michael Ewanichak*, *supra* note 2; *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

by the Equal Employment Opportunity Commission (EEOC). Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁴ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁵

On August 10, 1994 appellant, then a 51-year-old distribution clerk, filed an occupational claim, Form CA-2, alleging that he sustained situational stress and stress reactions. Appellant submitted evidence to support his claim including statements from him, witnesses and his supervisor, Byron Lewis and verifications slips of medical treatment. He stated that Mr. Lewis harassed him in many ways from January to June 1994 including removing him from his duty for no reason, timing all his moves and restroom breaks, raising his voice at him and telling him he must do whatever he wanted him to do, grabbing appellant's leave slip from his hand and throwing it on his desk "in frustration" because it was not completed according to his expectations and pushing his union steward, Nancy Gonzalez, out of his office when she went with him to obtain his advance pay. Appellant stated that his other supervisor, Wayne Oldham, also harassed him by "raising his voice" and telling him his documentation for his sick leave request was inadequate. By letter dated August 31, 1994, Mr. Oldham stated that appellant yelled at him when he told him that the medical documentation for his alleged employment injury was not adequate because no diagnosis had been provided. In a statement dated August 26, 1994, appellant's coworker, Jeronimo Gomez, stated that he observed Mr. Oldham and Mr. Lewis confronting appellant as to why he was in the break room when it was not his break time. In a statement dated August 31, 1994, a supervisor, F. Norene Taylor, stated that she witnessed Mr. Oldham and appellant discussing "paper work forms."

By letter dated September 28, 1994, the Office requested additional information.

Appellant submitted additional evidence indicating he filed a grievance with the EEOC reiterating his earlier complaints that from January to June 1994 Mr. Lewis harassed him. Appellant also submitted the first page of a letter of warning addressed to him dated November 18, 1994 and some duplicates of the verification slips. By decision dated February 7, 1995, the Office denied the claim, stating that appellant failed to establish that he sustained an injury in the performance of duty.

In an undated letter, received by the Office on February 6, 1996, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of medical reports dated September 1 and October 13, 1994 from Dr. Kent Andrews, a clinical psychologist, progress reports dated July 18 and August 3, 1994 and a statement from Ms. Gonzalez dated July 29, 1994 addressing difficulty she had from Mr. Lewis when she went with appellant to pick up his advance pay in that Mr. Lewis became enraged and pushed her out of the office, slamming the door. In his September 1, 1994 report, Dr. Andrews stated that he was treating appellant for stress resulting from harassment by supervisory personnel and refers to a personality conflict between appellant and his supervisors or inappropriate behavior by his supervisors, which

⁴ See *Martha L. Cook*, 47 ECAB ____ (Docket No. 95-429, issued December 6, 1995).

⁵ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

caused appellant's difficulty on the job. In his October 13, 1994 report, Dr. Andrews addressed his treatment of appellant and stated that appellant was not experiencing the same degree of harassment on the job. The progress reports dated July 18 and August 3, 1994 refer to stress on the job and harsh verbal behavior from appellant's supervisor.

By decision dated April 3, 1996, the Office denied appellant's reconsideration request.

Appellant has failed to establish a factual basis for his allegations as he has not presented evidence corroborating the incidents he describes. Further, to the extent his allegations address disputes over sick leave requests and excessive monitoring of his work or disciplinary actions by management, these are administrative functions of the employing establishment and as such are not compensable unless appellant shows the employing establishment abused its discretion or acted unreasonably.⁶ Appellant has made no such showing. Further, appellant did not establish his allegation of Mr. Lewis' pushing an office steward out of his office. Since appellant has presented insufficient evidence to establish compensable factors of employment, it is not necessary to address the medical evidence.⁷

The decision of the Office of Workers' Compensation Programs dated April 3, 1993 is hereby affirmed.

Dated, Washington, D.C.
December 17, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁶ See *Daryl R. Davis*, 45 ECAB 907, 911 (1994); *Barbara J. Nicholson*, 45 ECAB 803, 809 (1994).

⁷ *Diane C. Bernard*, 45 ECAB 223, 228 (1993).