

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. LaGREE and U.S. POSTAL SERVICE,
POST OFFICE, Austin, Tex.

*Docket No. 96-285; Submitted on the Record;
Issued February 10, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On May 15, 1995 appellant, then a 49-year-old modified distribution clerk, filed an occupational disease claim, alleging that he sustained post-traumatic stress disorder, adjustment disorder with mixed emotional features, "r/o personality disorder" and claustrophobia due to postal work trauma as a result of his federal employment. Appellant indicated that he first became aware of these conditions and became aware that they were work related on March 20, 1995. Appellant stopped work on March 20, 1995. In a supplemental statement appellant listed the following as causative factors of his conditions: work-related injuries on October 31, 1985 with periodic total disability through December 1, 1986, on June 23, 1993 with total disability through July 21, 1993 and on November 3, 1994 with mental and psychological stress caused by the appeal of this claim and Equal Employment Opportunity (EEO) complaints filed on February 15 and April 14, 1995 against coworker Cheryl Gregg and filed on March 20 and April 20, 1995 against Ted Gomez, appellant's supervisor during the period of the complaint. Appellant contends that his supervisor falsified information in relation to his November 3, 1994 worker's compensation complaint which led to the denial of his claim and need to appeal the same. Appellant also asserts that Mr. Gomez has retaliated against him for filing his March 20, 1995 EEO complaint in which he alleged he had been assaulted by Mr. Gomez and that the form of retaliation was a denial of a limited-duty position which he was entitled to as demonstrated by medical documentation.

In support of his claim, appellant submitted several statements from coworkers and one by a nonpostal contractor which he believed corroborated his allegations of harassment by Ms. Gregg and assault and retaliation by Mr. Gomez. In his March 20, 1995 EEO complaint, appellant asserted that Mr. Gomez assaulted him by yanking hard on his right ear which caused him to scream in pain and "snickering" as he walked away. In a statement by Darrell Cooper, a

nonpostal contractor, Mr. Cooper reported that Mr. Gomez approached appellant about finding other work for appellant to do while Mr. Cooper and his son were working in appellant's area. He said Mr. Gomez touched appellant's shoulder and pulled on his ear for about 15 seconds and that both Mr. Gomez and appellant laughed. Benjamin T. Solis provided a statement that Mr. Gomez became angry on March 15, 1995 when Mr. Solis approached him to schedule a Step I grievance meeting and that Mr. Gomez denied that the March 3, 1995 incident occurred. Mr. Solis said that Mr. Gomez stated that "if [appellant] wants to play games with me, I can play games too." Appellant viewed this statement as a verbal threat and asserts in his supplemental statement that he believed his supervisor was "out to get him." Appellant submitted two statements in relation to his February 15 and April 14, 1995 EEO complaints against Ms. Gregg. Appellant urged that Ms. Gregg was unprofessional toward him and intimidating and that she discriminated against him based on age and physical disability. He also contended that his supervisor, Mr. Gomez, did not do anything about Ms. Gregg's conduct toward him. In a statement from coworker David Pulliam, he reported that he overheard Ms. Gregg telling appellant to get out of her office and using words that she should not have about his handicapped condition. He also stated that others talked about appellant and said things to him without thinking first. In his statement, Mr. Joseph Roman indicated that in December 1993, Ms. Gregg had thrown some paperwork at appellant and talked to him in a condescending manner while they were in the conference room. Mr. Roman felt that Ms. Gregg's behavior was rude, disrespectful and unprofessional.

Appellant also submitted documentation which revealed that the February 15 and April 14, 1995 complaints against Ms. Gregg were dismissed on the grounds that the allegations in the complaint were not actionable under EEO Commission regulations. In addition, appellant withdrew his March 20, 1995 EEO complaint concerning Mr. Gomez's alleged assault and sexual harassment on April 7, 1995. Appellant requested and it was agreed that the "alleged responsible official" would receive corrective action concerning physical contact with the employee and notations in writing that were not of a business nature.

By decision dated September 12, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that none of the claimed factors occurred within the performance of duty. In a merit decision dated October 17, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted by appellant was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has not met his burden of proof to establish that he developed emotional conditions in the performance of duty causally related to factors of his federal employment.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to his condition. Workers' compensation law is not applicable 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 Federal Employees' Compensation Act. Where disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within

the coverage of the Act. On the other hand, the disability is not covered where it results from factors such 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. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ 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.² 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

In the present case, appellant has not identified any compensable factors of employment in relation to his occupational disease claim for emotional conditions. Appellant has alleged stress in relation to his prior work injuries in October 1985 and June 1993. However, appellant has not identified any specific incidents that occurred in the relation to those incidents which led to his general perception that these injuries were a causative factor in his present claimed condition. Thus, appellant's general perception that these injuries induced stress lacks specificity and is not a compensable factor of employment. Appellant also asserted that filing an appeal in relation to his November 1994 claim for workers' compensation caused him additional psychological and mental stress. The filing of an appeal in relation to an alleged work-related injury is not a factor within the performance of duty in appellant's federal employment. Moreover, appellant's appeal in relation to that claim has been fully adjudicated by the Board and in a decision dated November 20, 1997, the Board affirmed the Office's decisions findings that appellant did not sustain a right testicle hydrocele condition causally related to factors of his federal employment.⁴ In any case, appellant's allegations that the workers' compensation claims process was a factor in his development of emotional condition is without merit and these identified factors are not compensable under the Act.

Appellant has also alleged several incidents which he asserts constituted harassment or discrimination. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.⁵ Mere perceptions or feelings of harassment, however, are not compensable. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

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

⁴ *See Robert L. LaGree*, Docket No. 96-125 (issued November 20, 1997).

⁵ *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

allegations of harassment with probative and reliable evidence.⁶ Appellant failed to provide any such probative and reliable evidence in the instant case. Although appellant alleged that his coworker, Ms. Gregg, intimidated him and harassed him and filed an EEO complaint in relation to the alleged harassment, this complaint was dismissed on the grounds that actions complained of were not actionable. While appellant supplied statements from witnesses to substantiate his claim that Ms. Gregg discriminated against him, the record also contains evidence from the employing establishment that Ms. Gregg had requested that appellant be kept out of her work area because he had been harassing her and telling others he would get her in trouble. In light of the conflicting evidence in regard to appellant's and Ms. Gregg's mutual disregard for each other, the dismissal of his EEO complaint and the lack of specificity in the identification of incidents that constitute actual harassment by Ms. Gregg, appellant's allegation is not substantiated and is not deemed a compensable factor of employment. With respect to appellant's March 20, 1995 EEO complaint, a review of the evidence reveals that matter was settled without blame or error being assigned to appellant's supervisor, Mr. Gomez. Specifically, the settlement agreement provides that the "*allegedly* responsible official" will receive corrective action. (Emphasis added.) Thus, no finding of fault in relation to the March 3, 1995 incident was made and appellant has not substantiated his contention that he was assaulted by his supervisor while in the performance of duty.⁷ With respect to appellant's April 20, 1995 EEO complaint, a review of the record reveals that while the complaint was filed, it had not been resolved at the time the decisions by the Office were issued. Thus, appellant's mere perception of harassment is not a compensable factor of employment. Similarly, appellant provided a statement that Mr. Gomez stated that "if [appellant] wanted to play games, I can play them too," which appellant interpreted as a threat. Appellant has not identified any substantiated action after this statement which supports his belief that Mr. Gomez was threatening him. Therefore, any stress related to appellant's belief that his supervisor was "out to get him" is self-generated and is not a compensable factor of employment.

Finally, appellant contends that the reassignment of work on March 16, 1995 was retaliation for his filing an EEO complaint and was an additional causative factor in relation to his emotional conditions. A review of the record indicates that appellant's limited-duty assignment was changed both because he had submitted medical evidence indicating that climbing in and out of the shuttle vehicles aggravated his alleged work-related condition and because his November 1994 claim was denied. Moreover, while appellant did not like the new limited-duty position, it was not a position that was outside the restrictions previously provided by his physician. Thus, appellant's frustration over not being able to work in his preferred limited-duty assignment is self-generated and amounts to frustration over not being allowed to hold a particular position.⁸ In addition, the EEO complaint appellant filed in relation to this

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ While appellant submitted evidence subsequent to the issuance of the Office's October 17, 1995 decision which seems to substantiate his assertion that Mr. Gomez's conduct was inappropriate, he did not file a formal request for reconsideration or modification. Therefore, this evidence was not reviewed by the Office and cannot be reviewed by the Board on appeal. The Board's review is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)

⁸ *Donald E. Ewals*, 45 ECAB 111 (1993).

matter has not been resolved, there is no indication that the employing establishment acted unreasonably or abusively in the reassignment of appellant's position.⁹ Therefore, this is not a compensable factor of employment. Since appellant has not identified any compensable factors of employment under the Act, he has not met his burden of proof to establish that his emotional conditions arose out of the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated October 17 and September 12, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 10, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁹ *Mildred D. Thomas*, 42 ECAB 888 (1991).