

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ESTEBAN A. SOTUYO and U.S. POSTAL SERVICE,  
POST OFFICE, Provo, Utah

*Docket No. 96-488; Submitted on the Record;  
Issued February 9, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

The Board has duly reviewed the case record and finds that appellant has not established that he sustained an emotional condition in the performance of duty.

On August 5, 1994 appellant filed an occupational disease claim alleging that he sustained stress and stomach problems due to factors of his federal employment. By decision dated June 5, 1995, the Office of Worker's Compensation Programs denied appellant's claim on the grounds that he did not establish an injury in the performance of duty. By decision dated October 2, 1995, the Office denied appellant's request for reconsideration of his claim, finding that the evidence submitted was insufficient to warrant modification of its prior decision. The Office found that appellant did not allege any compensable factors of 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 his 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.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>2</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>3</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>4</sup>

In the present case, appellant has alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered factors under the terms of the Act.

Appellant attributes his emotional condition to harassment by a coworker, Mr. Rick Dugdale. The Board has held that for harassment to give rise to a compensable disability or condition under the Act, there must be some evidence that such implicated acts of harassment did, in fact, occur.<sup>5</sup> Mere perceptions of harassment are not compensable under the Act.<sup>6</sup> In the present case, appellant's allegations are not supported by any substantial, reliable or probative factual evidence of record.

Specifically, appellant maintains that Mr. Dugdale insulted and threatened him on November 20, 1986; made negative remarks about him to coworkers in March 1993; and portrayed him as a crybaby on April 8, 1993. Appellant further noted that Mr. Dugdale had confrontations with other employees. Appellant, however, has not submitted any independent corroborating evidence, such as a witness statement, in support of his allegations. The record does contain a statement by Mr. Dugdale, who denies harassing appellant. Further, statements from appellant's coworkers support a finding that Mr. Dugdale generally avoided appellant and did not provoke any confrontations. Thus, appellant has not established harassment as a compensable factor of employment.

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<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>6</sup> See *Ruthie M. Evans*, 41 ECAB 416 (1990).

Appellant also contends that he incurred stress when the employing establishment moved his work station to within five feet of Mr. Dugdale's work station. The employing establishment stated that it moved the work station used by appellant to facilitate mail processing and that the back of the station was seven feet high and five feet wide and thus appellant could not even see Mr. Dugdale while at his work station. The Board concludes that appellant's emotional condition in this regard was self-generated as it resulted from his frustration over not being permitted to work in a particular environment.<sup>7</sup>

The record further indicates that appellant received a 14-day suspension on November 25, 1986 for being absent without leave (AWOL). The record also establishes that the employing establishment removed appellant from employment effective August 26, 1994 for being AWOL. Although the handing of disciplinary actions is generally related to employment, it is an administrative function of the employer and not a duty of the employee.<sup>8</sup> However, the Board has held that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>9</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably. In this case, appellant has not submitted any independent evidence establishing that the actions taken by the employing establishment in suspending him in November 1986 and terminating him in August 1994 were improper. Thus, appellant has not established a compensable factor of employment under the Act.

As appellant has not established that he sustained an emotional condition as a result of a compensable factor of employment, he has not met his burden of proof to establish that his emotional condition was sustained in the performance of duty.

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<sup>7</sup> *Tanya A. Gaines*, 44 ECAB 923 (1993).

<sup>8</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>9</sup> *Id.*

The decisions of the Office of Worker's Compensation Programs dated October 2 and June 5, 1995 are hereby affirmed.

Dated, Washington, D.C.  
February 9, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member