

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT L. MOSKOWITZ and U.S. POSTAL SERVICE,  
POST OFFICE, Hauppauge, N.Y.

*Docket No. 96-788; Submitted on the Record;  
Issued February 13, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish 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 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 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>

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.<sup>3</sup> This burden includes the submission of a detailed

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</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 of Workers' Compensation Programs, 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>5</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>6</sup>

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

Appellant indicated that when he returned to work on September 8, 1994 he experienced stress because he was trained by a coworker, Lorraine Kabacinski, who had made false accusations against him in an Equal Employment Opportunity complaint.<sup>7</sup> Appellant indicated that he was required to train the individual who replaced him in the expedited service division. He alleged that in early 1994 the employing establishment did not adequately accommodate his requests for changes in his schedule. Appellant claimed that the employing establishment improperly allowed a subordinate employee with a disciplinary problem to stay on the job. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>8</sup> Although the handling of training assignments, disciplinary actions, and scheduling matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>9</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining

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<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> Appellant had been absent for several months on medical leave before returning to work on September 8, 1994 in a light-duty position in the business center division of the employing establishment. Appellant had previously worked in the expedited service division of the employing establishment. Appellant stopped work on September 12, 1994 and did not return.

<sup>8</sup> *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

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

whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to the above-described administrative matters concerning training assignments, disciplinary actions, and shift schedules. With particular regard to appellant's claim that he was required to train the individual who replaced him in the expedited service division, the evidence reveals that appellant was not required to train this individual and, in fact, the employing establishment made efforts to limit his contact with the expedited service division. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Appellant alleged that his position had "excessive job requirements" which were impossible to accomplish. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.<sup>11</sup> Appellant did not, however, present sufficient evidence to establish the factual basis of this claim. The record reveals that the position to which appellant returned on September 8, 1994 was especially designed to have a low stress level. Appellant's assertions regarding his duties, particularly with regard to his claim he was required to train employees, are not supported by the record.

Appellant alleged that he experienced stress because the employing establishment refused to honor his request to return to work in a division other than the business service division. The Board has previously held, however, that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve a claimant's ability to perform his or her regular or specially assigned work duties, but rather constitute a claimant's desire to work in a different position.<sup>12</sup> Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that he developed stress because "administrative changes" at work rendered him insecure about maintaining his position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.<sup>13</sup> Appellant alleged that he did not receive adequate support from his superiors at work. In this particular regard, he indicated that the employing establishment failed to support him by properly disciplining a subordinate employee. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>14</sup> Moreover, as noted above, appellant did not establish that the employing establishment acted improperly in its discipline of the employee in question.

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<sup>10</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>11</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>12</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>13</sup> See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>14</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

Appellant alleged that he developed stress on September 12, 1994 when Ms. Kabacinski angrily denied his request for her to help a customer. An altercation between coworkers which arose out of a claimant's regularly or specially assigned duties would be considered an employment factor.<sup>15</sup> Appellant did not, however, submit sufficient evidence, such as witness statements, to establish that the incident occurred in the manner alleged.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>16</sup>

The decisions of the Office of Workers' Compensation Programs dated November 2 and May 26, 1995 are affirmed.

Dated, Washington, D.C.  
February 13, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>15</sup> See *Irene Bouldin*, 41 ECAB 506, 514 (1990); *Lester O. Rich*, 32 ECAB 1178, 1180 (1981).

<sup>16</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).