

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. AMBROSE and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, Ohio

*Docket No. 96-815; Submitted on the Record;
Issued February 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an aggravation of a preexisting emotional condition due to factors of his federal employment.

On April 20, 1995 appellant, then a 42-year-old postal clerk filed an occupational disease claim, alleging that he had schizophrenia, sleep apnea, lumbar strain, "coxcedinia," sciatica and tendinitis of the right and left shoulders and that his inability to obtain appropriate sleep due to working at night aggravated his preexisting emotional conditions. In a decision dated September 21, 1995, the Office of Workers' Compensation Programs denied appellant's claim, on the grounds that no compensable factor of employment was identified as causing the occupational disability as alleged. In a merit decision dated December 18, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish modification.

The Board finds that this case, is not in posture for decision regarding the issue of whether appellant sustained an aggravation of a preexisting emotional condition in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty, as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹

¹ *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 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.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.³ 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.⁴

In the present case, the Office found that none of the factors mentioned by appellant either in his initial claim, or his request for reconsideration were compensable factors of employment. Appellant claimed that his schizophrenia was aggravated by his assignment to a tour of duty, (Tour I) where he worked at night from approximately 9:30 p.m. to 6:00 a.m. He asserted that when he complained about his work hours and indicated that it was aggravating his preexisting emotional condition of schizophrenia, he was advised by the employing establishment that he could apply for temporary schedule changes. Appellant stated that since there was no guarantee, that the temporary schedule changes would be approved, this added to his stress. On the supervisory reporting section of appellant's CA-2 claim form, the employing establishment indicated that appellant worked a rotating schedule. The record also contains an unsigned memorandum dated March 31, 1995 that states that appellant was transferred to a Tour I shift in 1992. In view of the discrepancies in the factual evidence regarding appellant's work schedule, the case must be remanded for further evidentiary development in relation to this issue. The Board has held that a change in an employee's duty shift is a factor of employment to be considered in determining whether an injury has been sustained in the performance of duty.⁵ The Board has also recognized that working a particular type of rotating shift (40-hour weeks but fluctuating shifts) is a compensable employment-related factor if the medical evidence establishes a deleterious effect due to such shift rotation.⁶ Therefore, as the evidence relevant to

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

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on reconsideration*, 42 ECAB 566 (1991).

⁵ *Charles J. Jenkins*, 40 ECAB 362 (1988).

⁶ *Harold Bradford*, 30 ECAB 85 (1979).

the issue of appellant's work hours is inconclusive and since there is evidence that appellant may have had his shift change immediately prior to the onset of his claimed conditions, this case is remanded to the Office for clarification of appellant's work schedule and further development of the evidence as deemed necessary.⁷

The decisions of the Office of Workers' Compensation Programs dated December 18 and September 21, 1995 are hereby set aside, and the case is remanded for further proceedings consistent with this decision to be followed by an appropriate decision.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *John J. Granieri*, 41 ECAB 916 (1990).