

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD W. DAUGHERTY and U. S. POSTAL SERVICE,
POST OFFICE, Cincinnati, Ohio

*Docket No. 96-920; Submitted on the Record;
Issued February 12, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he developed an emotional condition in the performance of duty, causally related to factors of his federal employment.

On February 3, 1994 the Office of Workers' Compensation Programs notified appellant that it had received and would develop his December 1993 claim for an emotional condition.¹

On July 19, 1995 appellant, then a 48-year-old letter carrier on limited duty, filed a claim for compensation alleging that on July 17, 1995 he sustained an emotional condition because the employing establishment notified him that he was no longer entitled to a limited-duty position.

In its July 17, 1995 letter, the employing establishment stated that appellant had had all his disability claims filed with the Office disallowed or closed out and that therefore his medical condition was "no longer considered to be limited duty." The employing establishment further stated that he had 14 days to elect one of three options, depending upon his circumstances. The options included: "(1) return to full duty with appropriate documentation; (2) disability retirement, or (3) request light duty in accordance with ... the National Agreement."

On July 18, 1995 appellant notified the employing establishment that he had a claim pending with the Office and had recently filed a new claim for compensation.

On July 31, 1995 appellant notified the employing establishment that he considered the July 17, 1995 letter to be part of its reprisal conduct towards him because he was a disabled employee and that he would refuse to comply with any order because the July 17, 1995 letter was incorrect.

On August 7, 1995 the Office notified appellant that it had received his claim for compensation alleging that his stress disorders were caused by harassment on and before

¹ The Office forwarded a copy of its letter to the employing establishment.

July 17, 1995. The Office asked appellant to provide a statement giving details about the claimed work stressors and related medical information concerning his prior stress treatment.

On September 1, 1995 appellant submitted a narrative indicating that the employing establishment knew of his orthopedic claim prior to its July 17, 1995 notice; that the employing establishment unjustifiably declined to submit his June 1995 claim for compensation benefits; that the employing establishment failed to notify him regarding his limited-duty status; and that, although he had been harassed since he started work, his latest claim concerned only the July 17, 1995 letter.

Appellant also submitted an undated medical report from Dr. Jonathan D. Rosenthal, appellant's treating psychiatrist, who stated that appellant's reaction to the July 17, 1995 letter was causally related to his recent traumatic experience, but that with continued medication and therapy, appellant would improve. Appellant also submitted a March 16, 1994 psychiatric report from him and copies of his treatment notes from February 1987 through February 1994. In the March 16, 1994 medical report, Dr. Rosenthal stated that appellant was hospitalized for four weeks in 1980 with post-traumatic stress reaction of the manic depressive type with manic features. He then noted a history of recurrent episodes, noting that appellant was again hospitalized in 1981 and 1983 with post-traumatic stress reaction of psychotic proportions with severe anxiety and paranoid trends.

On September 11, 1995 the Office received a copy of an August 3, 1995 settlement agreement between the employing establishment and appellant regarding a discrimination complaint. In that agreement, the employing establishment and appellant agreed that the employing establishment would forward two compensation claims that appellant had submitted with the employing establishment to the Office; that during the pendency of those claims appellant would remain in his limited-duty position; that the employing establishment would pay for a medical examination to be conducted by Dr. James Willis, a Board-certified orthopedic surgeon; that the July 17, 1995 letter from the employing establishment to appellant would be vacated and withdrawn as if it never existed; and that appellant would withdraw his request for equal employment counseling as a result of the July 17, 1995 letter. The agreement also stipulated that it settled all "outstanding administrative complaints filed, ... except for OWCP claims."

By decision dated September 14, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the claimed condition arose out of the course of appellant's employment. In an accompanying memorandum, the Office stated that it was appellant's burden to establish that the employing establishment's July 17, 1995 letter was issued either in error or as a result of an abusive act in order to demonstrate that his emotional condition, if established, was as a result of an employment factor. The Office further noted that the employing establishment and appellant agreed to consider the July 17, 1995 letter null and void as a condition of a settlement of appellant's EEO grievance, and that therefore the July 17, 1995 letter was a personnel or administrative action, and not a compensable factor for the purposes of the Federal Employees' Compensation Act.²

² 5 U.S.C. §§ 8101-8193.

The Board finds that the case is not in posture for decision and must be remanded for further evidentiary development.

The Act does not cover every injury or illness that is somehow related to one's employment. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. The disability is not compensable, however, when it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.³ Generally, an employee's emotional reaction to an administrative or personnel matter is not compensable. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁵ In the present case, the Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

In this case, appellant has alleged that he had an emotional reaction based on the employing establishment's letter of July 17, 1995 notifying him that his limited-duty position would terminate. A change in position does not arise as a compensable factor *per se*. The factual circumstances surrounding the employee's claim must be carefully examined to discern whether the alleged injury is being attributed to the inability to work his or her regular or specially assigned job duties, *i.e.*, a compensable factor arising out of and in the course of employment, or whether it is based on a claim which is premised on the employee's frustration over not being permitted to work a particular shift or to hold a particular position. In this regard, the assignment of work is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment.⁶ The record shows that appellant was given notice that his limited-duty position would end because he no longer had any claims pending with the Office. The employing establishment therefore offered appellant three choices, one of which was to return to unspecified full duty, the second which was to retire on disability retirement and the third which was to petition for a limited-duty position through the National Agreement. The Board has held that an administrative or personnel matter will be considered to be a compensable employment factor where the evidence discloses error or abuse on the part of the employing establishment. In

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Norman A. Harris*, 42 ECAB 923 (1991); *Thomas D. McEuen*, 42 ECAB 566 (1991).

⁵ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁶ *See Peggy R. Lee*, 46 ECAB 527 (1995).

determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.

However, the record in this case does not contain sufficient evidence to determine whether the employing establishment's July 17, 1995 letter notifying appellant that his limited-duty position would terminate constituted error or abuse. Absent sufficient record development, the Board cannot determine whether the July 17, 1995 letter constituted error or abuse. That is, the Board is unable to determine whether appellant had residuals of the accepted condition which required a light-duty assignment. Therefore the case will be remanded to the district office to determine whether appellant was entitled to limited duty on July 17, 1995. Following such development, the Office shall issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated September 14, 1995 is hereby set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, D.C.
February 12, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member