

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA PRICE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Hattiesburg, Miss.

*Docket No. 95-3102; Submitted on the Record;
Issued January 15, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On September 2, 1993 appellant, then a 48-year-old distribution clerk, filed a claim for severe depression and emotional stress. In a January 21, 1994 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. In a June 9, 1995 decision, an Office hearing representative found that appellant had failed to establish any compensable factors of employment and therefore had failed to discharge her burden of proof that she had sustained an injury in the performance of duty.

The Board finds that the case is not in posture for decision.

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 the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the 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

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

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

Appellant cited several factors which she contended caused or contributed to her depression. She indicated that on March 25, 1985 she was lifting catalogs from a postal trailer by herself when she injured her back. She commented that she had been working hard to demonstrate that she deserved promotion or additional training. She claimed that her coworkers did not believe she had sustained an injury and some had made comments to that effect to her. She contended that in 1986 and 1987 the postmaster and her coworkers began shunning her in an organized fashion. She related that she was puzzled why she was being treated so when a coworker who had quit his job stated that appellant had stepped on some toes and had been put on an "extermination list." She stated that the postmaster and some coworkers made comments which, in retrospect, made her believe that they were referring to something pornographic in reference to her. She indicated that she filed a claim for compensation which was accepted and she received compensation for four hours a day for the period February 23, 1988 to August 21, 1992. She commented that she was under severe personal stress during this period because she was in divorce proceedings which involved her claim that her former husband had abused their daughter. She stated that she had moved to California to protect her daughter. On March 18, 1992 the employing establishment offered her a position as a modified distribution clerk for four hours a day at a different location but near where she had previously worked. The employing establishment informed her that her compensation would be terminated if she refused the position. Appellant indicated that she accepted the position and moved back to Mississippi because she needed the compensation payments even though she was concerned for her daughter. She stated that she subsequently learned that a supervisory claims examiner for the Office had raised a question about whether appellant should be forced to move back and accept a position at the employing establishment because of her concern for her daughter.

Appellant indicated that after she returned to work she collapsed at work on five occasions. She submitted medical reports relating to a syncope episode in September 1992. She stated that on two occasions the employing establishment erroneously terminated her health benefits which forced her to pay thousands of dollars for medical treatment, particularly \$12,000.00 for surgery she underwent on November 1, 1990. She contended that several coworkers at the employing establishment who has less seniority than her received promotions or training that she did not receive. She stated that when she returned to work, her pay status was incorrect and was not changed despite her constant requests for correction. She indicated that when a new postmaster came to the employing establishment, the problem was corrected on the same day she brought it to the new postmaster's attention. She stated that on November 17,

(1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

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

1992 she took a telephone message for the acting postmaster that the flash collection was to be made. She indicated that she delivered the message to the acting postmaster who then left for several hours. She related that the acting postmaster came to her the next day and instructed her not to contact her former employing establishment. She admitted at the hearing that she had been contacting her former employing establishment repeatedly in an effort to correct her pay status. She stated that the week after this incident coworkers began having a strange reaction to her, bursting into uncontrollable laughter when she walked by. She alleged that the acting postmaster, in the hours he had left after receiving the message, had gone to her former employing establishment and picked up material that contact some material which everyone thought she was the subject. At the hearing appellant voiced her suspicion that the material was perhaps a pornographic tape which allegedly depicted her.

Appellant has alleged several errors or abuses by the employing establishment, including incidents of alleged harassment by coworkers, forcing her to return to work despite the suggestion of a supervisory Office claims examiner, canceling her health insurance twice, denying promotions that went to employees with less seniority and reinstating her at a incorrect pay scale which took several months and a new postmaster to correct. These matters, if proven to have occurred as appellant alleged, could constitute factors of employment. The administrative actions, such as canceling health benefits or payment at an inaccurate rate, could be considered factors of employment if it is established that the employing establishment erred in any of these actions. The Office, however, did not request any statements from the employing establishment on whether the incidents occurred as alleged by appellant. Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁴ In the present case, there are no statements from appellant's supervisors and coworkers on whether the incidents occurred as she alleged and an explanation for the cancellation of appellant's health insurance on two occasions, the requirement that she return to work and the problems with her pay after her reinstatement. The Office's procedures require the Office, in the development of an emotional condition case, to obtain statements from witnesses, coworkers and supervisors, among others, before it makes a determination of whether the incidents alleged by a claimant occurred as alleged and whether such incidents or factors constitute compensable factors of employment.⁵

The case will therefore be remanded for further development. On remand, the Office should request the employing establishment to submit statements from appellant's supervisors, coworkers and other relevant officials to indicate whether the incidents alleged by appellant occurred as she alleged and whether the employing establishment, in its administrative actions, erred in regards to appellant's health insurance, pay scale and her return to work. After further development as it may find necessary the Office should issue a *de novo* decision.

⁴ *Henry Ross, Jr.*, 39 ECAB 373 (1988).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17(j) (March, 1994).

The decision of the Office of Workers' Compensation Programs, dated June 9, 1995, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
January 15, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member