

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONALD R. WHITE and U.S. POSTAL SERVICE,  
POST OFFICE, North Reading, Pa.

*Docket No. 96-986; Submitted on the Record;  
Issued June 26, 1998*

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DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition in the performance of his federal employment after December 1991 causing disability after January 22, 1994.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant sustained an adjustment disorder and generalized anxiety disorder due to his federal employment which caused him periods of disability from October 7, 1989 through April 7, 1992. Appellant returned to work in December 1991 following the 1989 injury. On March 25, 1994 appellant filed a claim alleging that he had not worked since January 27, 1994 due to "headaches, insomnia, dizziness, depression, shaking, anxiety, and rage."

Appellant submitted lengthy statements detailing numerous incidents occurring since he returned to work in December 1991, which he alleged caused his current condition. The Office denied appellant's claim by decision dated February 27, 1995. An Office hearing representative affirmed the denial of the claim by decision dated November 6, 1995.

The Office hearing representative found that many of appellant's allegations involved administrative actions taken by the employer and that appellant had not established error or abuse on behalf of the employing establishment in these administrative acts. Generally, actions of the employing establishment in administrative or personnel matters are not considered compensable employment factors. 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.<sup>1</sup> The hearing representative also found that appellant had not factually established interactions with his coworkers which appellant perceived as harassing. An employee's charge that he was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.<sup>2</sup> For harassment to give rise to a compensable disability under the Federal Employees' Compensation Act,<sup>3</sup> there must be some evidence that acts alleged or implicated by the employee did, in fact, occur.<sup>4</sup> The hearing representative found that appellant had established that he was exposed to loud noise at the employing establishment, which was a factor of employment. The hearing representative then reviewed the medical evidence and found that appellant had not submitted the necessary medical evidence to establish that this factor of employment caused his alleged emotional condition. The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. Regarding appellant's allegations that administrative actions, harassment and loud noise caused his emotional condition, the Board finds that the decision of the Office's hearing representative, dated and finalized on November 6, 1995, is in accordance with the facts and law in this case and hereby adopts the findings and conclusions of the hearing representative regarding these allegations.

However, regarding appellant's allegation of overwork, the Board finds that the Office has not properly developed and evaluated appellant's claim. The Board has held that overwork may be a compensable factor of employment.<sup>5</sup> A claimant cannot meet his burden of proof by merely alleging overwork, rather the claimant must submit evidence supporting such claim. If the claimant substantiates with corroborating evidence that he did not have ample time to complete his duties, or that he was unable to complete the assigned duties due to complexity or due to lack of assistance, such allegation could be compensable.<sup>6</sup>

The record does contain evidence that appellant's carrier route from November 15, 1993 required more than eight hours of work per day. Appellant testified that his acting supervisor had previously performed route 3 and that this individual could perform the work at a rate approximately twice the standard. Appellant has alleged that while he could request auxiliary assistance to complete his route, he often would not know of the extent of assistance required until after he had already completed his request for assistance. On February 8, 1995 the employing establishment's Postmaster submitted a log of entries relating to appellant's allegations. Regarding the work load of route 3, the Postmaster noted that appellant began his assignment to carrier route 3 on November 15, 1993. The Postmaster stated "that route at that time was adjusted to more than 8 hours per day, with permanent router assistance to cover that adjusted time above 8 hours. Growth in mail volume and deliveries since the last inspection

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<sup>1</sup> *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>2</sup> *O. Paul Gregg*, 46 ECAB 624 (1995).

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>5</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>6</sup> *See Sandra F. Powell*, 45 ECAB 877 (1994).

required that more time than originally planned (per the latest adjustment) was necessary to complete delivery of the route each day.” The record also indicates that appellant requested a special route inspection on December 28, 1993, an inspection occurred during the spring of 1994 and appellant’s route was adjusted. The Office hearing representative found that because appellant had voluntarily bid for this route, any complaint of overwork was not compensable. Overwork, if factually established, relates to the performance of the employees’ regular or specially assigned duties, and has been held by the Board to constitute a compensable factor of employment.<sup>7</sup> The acceptance of an employment position or duty does not in and of itself render any incident allegedly causing an emotional condition outside the performance of duty. The Office shall determine whether appellant has established that from November 15, 1993 until route 3 was adjusted in 1994 he was overworked because he did not have ample time to complete his duties, he was unable to complete the assigned duties due to complexity, or due to lack of assistance. After such further development as necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers’ Compensation Programs dated November 6, 1995 is set aside in accordance with this opinion and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
June 26, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Helen Casillas*, 46 ECAB 1044 (1995).