

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRADY L. RAMSEY and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, N.M.

*Docket No. 96-1252; Submitted on the Record;
Issued June 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On November 22, 1994 appellant, then a 44-year-old manager, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to a fear of losing his job.

In a letter dated December 13, 1994, Gary Meyers, an employing establishment injury compensation specialist, stated that the employing establishment challenged appellant's claim. He noted that on five occasions appellant admitted to having requested annual leave but knew that some of these annual leave hours had actually been recorded as hours worked but he made no attempt to correct this matter. Mr. Meyers noted that appellant had received a letter of proposed removal for unacceptable conduct because of his failure to correct the records regarding his use of annual leave. The record shows that appellant was subsequently removed from his position for this conduct.

In a letter dated January 16, 1995, appellant's supervisor stated that appellant was removed from his position due to the unacceptable conduct regarding his use of leave. He stated that appellant had not complained to him of any conflicts with other employees, excessive work hours or unattainable goals and that during the time that appellant claimed to have sustained his emotional condition his operation was staffed at above normal levels with no major projects or changes.

In a report dated February 3, 1995, Dr. Harold Sunderman, an internist, related appellant's impression that he had been treated unfairly in his employment and this had caused him emotional distress and had affected his blood pressure. He stated his belief that appellant's emotional problems were a direct result of the stress he had been experiencing at work.

In a supplementary letter dated February 5, 1995, appellant attributed his emotional condition to being assigned a position which he did not like, being disciplined regarding his use

of leave, discrimination from his supervisor, and to working at home on his own personal time preparing mail route adjustments.

In a report dated May 3, 1995, Ben J. Klein, Ph.D., a psychologist, related that appellant was suffering from post-traumatic stress disorder as a result of ongoing stress at work and his termination from his employment in November 1994.

By decision dated February 22, 1996, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that his claimed emotional condition was causally related to compensable factors of his employment.

The Board finds that appellant has not met 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.¹ 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.²

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.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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, 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 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

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Regarding appellant's allegations that the employing establishment unfairly disciplined him regarding his use of leave, the Board finds that this allegation relates to an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.⁷ Although the handling of matters relating to use of leave is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.⁸ 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 whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ In a letter dated December 13, 1994, an employing establishment injury compensation specialist noted that on five occasions appellant admitted to having requested annual leave but knew that some of these annual leave hours had actually been recorded as hours at work but he made no attempt to correct this matter. The compensation specialist noted that appellant had received a letter of proposed removal for unacceptable conduct because of his failure to correct the records regarding his use of annual leave. The record shows that appellant was subsequently removed from his position for this conduct. Appellant has provided insufficient evidence that the employing establishment erred or acted unreasonably or abusively in its handling of this administrative matter. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.¹⁰

Appellant has also alleged that harassment and discrimination on the part of his supervisor contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹² In the present case, the employing establishment denied that appellant was subjected

⁶ *Id.*

⁷ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁸ *Id.*

⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁰ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisor.¹³ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that he worked on his own personal time at home preparing mail route adjustments, there is no evidence that he was required to do this by the employing establishment and therefore this allegation is not deemed a compensable factor of employment.

Regarding appellant's complaint that he was assigned to a position which he did not like, as previously noted, disability is not covered where it results from frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁴

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.¹⁵

The February 22, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 8, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹³ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ See *Eileen P. Corigliano*, 45 ECAB 581 (1994); *Neil F. Carney*, 36 ECAB 289, 297-98 (1984).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, *supra* note 5.