

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARDO COBERO and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Washington, D.C.

*Docket No. 96-1656; Submitted on the Record;
Issued May 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

On September 14, 1995 appellant filed a claim alleging that his depression was causally related to his federal employment. On the claim form appellant stated that the employing establishment had ignored his medical restrictions and required work in excess of his physical limitations. In an accompanying narrative statement, appellant indicated that he had an employment-related back injury in 1988, which continued to require certain physical restrictions such as no lifting above 10 pounds, a chair with back support, and limitations on certain activities. Appellant asserted that his mail handler duties exceeded these restrictions. He also stated that he was harassed by his supervisors regarding his medical restrictions and the taking of medication which caused drowsiness, and was accused of sleeping at work. Appellant described an August 26, 1995 incident in which he was asked by his supervisors to account for his time from 5:00 to 6:45 a.m., and appellant explained that he took lunch, then returned to his work assignment, where no mail was found, and he then went to the break area. According to appellant, he was told by his supervisor that he would be charged as absent without leave (AWOL) for that time period.

In letters dated October 31 and December 19, 1995, the Office of Workers' Compensation Programs asked appellant to submit additional supporting evidence regarding his claim. There is no indication that appellant responded to the requests for information. By decision dated March 20, 1996, the Office denied the claim, finding that appellant had not established a compensable factor of employment as contributing to his condition.

The Board has reviewed the record and finds that appellant has not established an emotional condition in the performance of duty.

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 factors of his federal employment.¹ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

In the present case, appellant has alleged that the employing establishment required him to work outside his medical restrictions regarding his back condition. This could constitute a compensable factor of employment, if substantiated by the record.⁴ In this case, however, no supporting evidence was submitted. Appellant did not describe in detail his duties, did not submit medical evidence regarding his physical restrictions, or otherwise support his assertion that he was required to work outside his established medical restrictions. The Board therefore finds that appellant has not substantiated a compensable factor of employment in this regard.

In his narrative statement, appellant discusses an August 26, 1995 incident in which he was allegedly told he would be charged as being AWOL for approximately an hour and a half. The charging of an employee with AWOL is an administrative or personnel action of the employing establishment.⁵ Although generally related to employment, administrative matters are considered functions of the employer rather than duties of the employee. Unless there is evidence of error or abuse in the administration of a personnel matter, coverage will not be afforded.⁶ To the extent that appellant alleges that the actions of his supervisors on August 26,

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

⁴ *Diane C. Bernard*, 45 ECAB 223 (1993); *Minnie L. Bryson*, 44 ECAB 713 (1993).

⁵ *See Diane C. Bernard*, *supra* note 4.

⁶ *Sandra F. Powell*, 45 ECAB 877 (1994).

1995 were erroneous, he has not submitted any evidence to support a finding of error or abuse. Appellant indicated only that a grievance was filed, but no supporting evidence documentation regarding the grievance or other probative evidence was submitted to establish error or abuse in an administrative matter.

The Board notes that appellant has also alleged that he was “harassed” by his supervisors regarding his medical restrictions, and was accused of sleeping on the job. A claim based on harassment or discrimination must be supported with probative and reliable evidence.⁷ Mere perceptions of harassment or discrimination do not constitute a compensable factor of employment.⁸ Appellant has not provided sufficient detail or supporting evidence to establish a claim based on harassment in this case.

Accordingly, the Board finds that appellant has not established any of his allegations as compensable factors of his federal employment. Since he has not substantiated a compensable factor of employment as contributing to his condition, he has not established an emotional condition in the performance of duty. In the absence of a compensable work factor, the Board will not address the medical evidence on the issue of causal relationship.⁹

The decision of the Office of Workers’ Compensation Programs dated March 20, 1996 is affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁷ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁸ *Sharon R. Bowman*, 45 ECAB 187 (1993).

⁹ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).