

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of HARLEY D. CROSBY and U.S. POSTAL SERVICE,  
POST OFFICE, Summerville, S.C.

*Docket No. 97-282; Oral Argument Held February 19, 1998;  
Issued May 18, 1998*

Appearances: *Angela V. Greene*, for appellant; *Sheldon G. Turley, Jr., Esq.*,  
for the Director, Office of Workers' Compensation Programs.

---

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an emotional or physical condition causally related to compensable factors of his federal employment.

In the present case, appellant filed a claim for an emotional condition and resulting chest pains causally related to his federal employment. On the claim form appellant stated that the cause of injury was intentional harassment. In a narrative statement, appellant described an April 13, 1994 supervisors meeting in which he was questioned about "getting the mail up by 8:00 a.m.," a failure to post a job, and an employee's grievance. Appellant indicated that after the meeting he "felt like he was going to explode" and felt pains in his chest.

In a statement dated June 8, 1994, appellant discussed both the April 13, 1994 meeting as well as prior incidents. According to appellant, he was subject to retaliation by the employing establishment for his participation in an EEOC (Equal Employment Opportunity Commission) complaint filed by another employee.<sup>1</sup> Appellant stated that he was transferred in January 1993, and the postmaster, Mr. Ramsey, threatened to fire him several times and continued to harass him. He asserted that Mr. Ramsey "increased my work load by demanding that I work the morning shift without adequate staff to put up the 8:00 a.m. mail." Appellant indicated that he was forced to attend a postmasters meeting on April 1, 1994, where he was subjected to unwarranted accusations about his mail processing operation and his supervisory skills. On June 16, 1994 appellant filed a notice of recurrence of disability commencing June 14, 1994. In an accompanying narrative statement, appellant described a June 14, 1994 meeting in which Mr. Ramsey stated that appellant had incorrectly instructed city carriers on June 3, 1994, that

---

<sup>1</sup> In an April 23, 1995 statement, appellant indicated that the retaliation included being denied an outstanding rating on a performance appraisal, and being denied promotions.

appellant was not properly completing his daily paperwork and his weekly scheduling was inadequate.

By decision dated June 29, 1994, the Office of Workers' Compensation Programs denied the claim on the grounds that the medical evidence was not sufficient. An Office hearing representative affirmed the denial by decision dated July 31, 1995, finding that appellant had not established any compensable employment factors as contributing to his condition. Appellant requested reconsideration, and by decision dated September 26, 1996, the Office denied modification of the prior decision.<sup>2</sup>

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

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.<sup>3</sup> 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 his emotional condition is causally related to the identified compensable employment factors.<sup>4</sup>

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.<sup>5</sup>

With respect to appellant's allegation of a pattern of harassment and retaliation by Mr. Ramsey and the employing establishment, the Board has held that a claim based on harassment or discrimination may be compensable if there is probative evidence that harassment or discrimination did, in fact, occur.<sup>6</sup> The evidence of record does not establish a claim based on

---

<sup>2</sup> The record also contains a September 30, 1997 reconsideration decision, which was issued after appellant filed an appeal with the Board. Since this decision involved the same issues before the Board while the Board had jurisdiction over the case, it is null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>4</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Mary A. Sisneros*, 46 ECAB 155 (1994); *Lorraine E. Schroeder*, 44 ECAB 323 (1992). Some of the alleged

harassment or retaliation in this case. Although appellant's representative has stated that appellant prevailed in EEOC and MSPB (Merit Systems Protection Board) proceedings, the record does not contain any findings with respect to these proceedings.<sup>7</sup> In the absence of probative evidence, the Board finds that appellant has not established a claim based on harassment.

Appellant also briefly raised the issue of an increased work load. Overwork can be a compensable factor if it is supported with probative evidence,<sup>8</sup> but the record does not contain sufficient evidence to establish overwork in this case. Appellant did not submit a detailed description of his work load, and the evidence from the employing establishment, for example, did not show an increase in mail volume or staff shortages. The Board finds that the evidence of record is not sufficient to establish overwork as a compensable factor here.

The Board finds, however, that appellant has established compensable factors of employment with respect to the April 13, 1994 meeting.<sup>9</sup> Although the hearing representative found that appellant had not established error or abuse, the hearing representative did make factual findings that a meeting did occur, that appellant was reprimanded for not having the mail up by 8:00 a.m., with an ensuing discussion with regard to a grievance filed by an employee who was under appellant's supervision. The April 13, 1994 supervisors meeting was part of appellant's regular or specially assigned duties, and the discussion at this meeting was related to his supervisory duties. The incidents are clearly within the scope of coverage under the principles of *Lillian Cutler*.<sup>10</sup> The Board accordingly finds that appellant has established compensable factors of employment. The case will be remanded to the Office for preparation of a statement of accepted facts.<sup>11</sup> After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated September 26, 1996 is set aside and the case remanded for further action consistent with this decision of the Board.

---

retaliatory acts included administrative duties of the employer with regard to performance evaluations and decisions on promotions or transfers. Administrative actions are compensable only if there is a showing of error or abuse by the employing establishment; see *Vaile F. Walders*, 46 ECAB 822 (1995). The record does not establish error or abuse in this case.

<sup>7</sup> Appellant's representative stated that such evidence was timely submitted to the Office, but the record contains no evidence to substantiate this claim. The Board cannot consider evidence submitted after the September 26, 1996 Office decision.

<sup>8</sup> See *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>9</sup> Appellant has discussed other meetings as well, but the Office did not make findings as to what occurred at these meetings. The Office should make appropriate findings with respect to these allegations.

<sup>10</sup> *Supra* note 5.

<sup>11</sup> The statement of accepted facts should be based on all of the evidence submitted, including evidence submitted after the September 26, 1996 Office decision.

Dated, Washington, D.C.  
May 18, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member