

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY E. WEARY and U.S. POSTAL SERVICE,
POST OFFICE, Berkeley, Calif.

*Docket No. 97-770; Submitted on the Record;
Issued November 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained employment-related stress.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met his burden.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

The facts in this case indicate that on December 27, 1995 appellant, then a 39-year-old city carrier, filed an occupational disease claim, alleging that harassment by the employing establishment caused employment-related stress. He had been dismissed from employment on April 18, 1994. By decision dated May 20, 1996, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not sustained an injury in the performance of duty. On June 12, 1996 appellant requested reconsideration and submitted additional evidence. In a September 9, 1996 decision, the Office denied the request, finding the evidence submitted irrelevant, repetitious or cumulative. The instant appeal follows.

In support of his claim, appellant submitted statements alleging that he was harassed by his supervisor, Joyce Chan, who practiced favoritism and held him to a different standard than other employees. He made specific allegations that Ms. Chan withheld messages, required extra documentation from him regarding absences, and sent a coemployee to spy on him. He indicated that he was dismissed from the employing establishment merely for calling Ms. Chan a "fat ass" on March 14, 1994.

In a February 9, 1996 statement, Ms. Chan disputed appellant's allegations and described the March 14, 1994 incident. The employing establishment provided a March 17, 1994 notice of removal which indicated that appellant was to be removed from service based on unsatisfactory conduct. The March 14, 1994 incident was described and notice was taken of two previous suspensions for unsatisfactory conduct, one suspension for failure to follow instructions, and one suspension and three letters of warning for unsatisfactory work performance. Also submitted was a step 3 grievance denial for the March 17, 1994 notice of removal.

The medical evidence includes an April 18, 1996 report from Alden L. Lovell, Ph.D., who diagnosed anxiety disorder and acute stress disorder and advised that appellant has a high degree of frustration due to incarceration⁵ and, more importantly, due to the loss of his job at the employing establishment. In an April 30, 1996 report, Jeanne L. Rivoire, Ph.D., diagnosed stress disorder and anxiety disorder due to frustration over a hostile work environment.

Regarding appellant's dismissal from the employing establishment, as a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of coverage under the Act.⁶ An administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁷ In

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ The record indicates that appellant was incarcerated in 1994 for abusing his daughter.

⁶ See *Michael L. Malone*, 46 ECAB 957 (1995).

⁷ *Id.*

determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.⁸ Here, appellant's grievance regarding this matter was denied, and there is nothing in this record to indicate that the Office acted in an improper manner.

Similarly, regarding appellant's allegation of harassment and discrimination by Ms. Chan, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.⁹ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment,¹⁰ and an employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.¹¹ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹² In the present case, appellant has not submitted evidence corroborating his various allegations of harassment by Ms. Chan. A claim based on a difficult relationship with a supervisor must be supported by the record,¹³ and a claimant's burden of proof is not discharged by the fact that the employee has identified some employment factors. Therefore, in the absence of substantiating evidence, appellant did not establish that harassment or discrimination occurred.¹⁴ Hence, appellant failed to establish that he sustained an emotional condition in the performance of duty.¹⁵

⁸ See *Frederick D. Richardson*, 45 ECAB 454 (1994).

⁹ *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

¹⁰ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

¹¹ *William P. George*, 43 ECAB 1159 (1992).

¹² See *Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹³ See *Diane C. Bernard*, 45 ECAB 223 (1993).

¹⁴ See *Raul Campbell*, 45 ECAB 869 (1994).

¹⁵ Since appellant has not established a compensable work factor, the Board will not address the medical evidence; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decisions of the Office of Workers' Compensation Programs dated September 9 and May 20, 1996 are hereby affirmed.

Dated, Washington, D.C.
November 25, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member