

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN H. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Largo, Fla.

*Docket No. 97-938; Submitted on the Record;
Issued November 2, 1998*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty.

On October 6, 1995 appellant, a letter carrier, filed a claim asserting that she developed stress depression, anxiety and physical problems secondary to stress while in the performance of her duties. She stated that it began when the route assignments were made on January 23, 1995 and her route became overburdened. She implicated the new station manager, who stood behind her case daily and who ordered an inspection of her route. After her arrival, appellant stated, the supervisors started questioning estimates and would not give needed help. Mostly, however, appellant implicated the actions of the new supervisor of customer services, whom she accused of daily harassment and a generally confrontational attitude.

On October 19, 1995 Dr. Gerard E. Boutin, appellant's attending clinical psychologist, reported that he had been treating appellant for depression, anxiety and post-traumatic stress secondary to her federal employment. He diagnosed post-traumatic stress disorder and major depressive disorder without psychosis, and he reported that this was a permanent condition because of the extent and severity of the harassment that appellant had to put up with through the past year. Dr. Boutin reported that appellant was not capable of returning to work.

Appellant filed a grievance concerning her supervisor's denial of a sick leave request. The grievance was resolved at Step 2 by paying appellant 64 hours of sick leave through a payroll adjustment. Appellant filed a grievance asserting, among other things, that her supervisor forced her to work overtime by not providing requested assistance. This grievance was denied at Step 2. Appellant also filed a formal Equal Employment Opportunity (EEO) complaint asserting age-based discrimination. She explained that this complaint was pending.

Appellant submitted an undated statement from a shop steward, who took exception to the actions or inaction of appellant's supervisor and who accused the supervisor of intimidation.

Appellant's supervisor submitted an undated statement explaining, among other things, that appellant initially failed to submit medical documentation to support her sick leave request, but that she received all of the sick leave she earned after she submitted the necessary documentation. Appellant's supervisor disputed appellant's perception of the facts. She asserted that appellant was very inaccurate in her recollection of events. Appellant's supervisor asserted that she had not spoken to anyone in an unprofessional manner and that she consistently treated appellant with respect and dignity because she realized that appellant was emotionally unstable. Appellant's supervisor asserted that attempts to improve appellant's performance were justified, that appellant's route required very little overtime or assistance even during the high-volume time of year, and that appellant's route was not overburdened.

Appellant was separated for disability retirement on January 9, 1996.

In a decision dated December 17, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence failed to demonstrate that the claimed injury occurred in the performance of duty.

The Board finds that the evidence of record is insufficient to establish that appellant sustained an emotional condition while in the performance of her duties.

As the Board observed in the case of *Lillian Cutler*, workers' compensation law does not cover each and every illness that is somehow related to one's employment. Disability is generally regarded as due to an injury arising out of and in the course of employment when it results from an employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. On the other hand, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹

The Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.² The Board has also generally held that allegations alone by a claimant are insufficient without evidence corroborating the allegations. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.³

Appellant's complaints concerning the manner in which her supervisor performed her supervisory duties or the manner in which the supervisor exercised her supervisory discretion

¹ 28 ECAB 125, 129-31 (1976).

² *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

³ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

fall, as a rule, outside the scope of coverage provided by the Federal Employees' Compensation Act.⁴ Appellant has submitted evidence relating to grievances and an EEO complaint, and her account of events paints an atmosphere of confrontation. None of this evidence, however, is sufficient to establish error or abuse by the employing establishment. Appellant explained that the EEO complaint was pending, and the record shows that one of the grievances was denied at Step 2. The other grievance was resolved to appellant's satisfaction but without a finding of error on the part of the supervisor. As the supervisor explained, appellant ultimately submitted the medical documentation necessary to support her request for leave. The supervisor also disputed appellant's perception of the facts and rebutted a number of her allegations, including the allegation that her route became overburdened.⁵ The statement of the shop steward also took issue with the actions or inaction of the supervisor and expressed the opinion that the supervisor engaged in acts of intimidation; however, with no probative and reliable evidence clearly establishing error in the actions or inaction complained of or abuse in the exercise of supervisory discretion, the statement of the shop steward is insufficient to establish the factual basis necessary to support appellant's claim for compensation.

A claimant seeking compensation under the Act⁶ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁷ Where appellant implicates actions taken by the employing establishment but submits no finding or decision substantiating error or abuse in any administrative or personnel matter, and where her perception of events is disputed or rebutted by the employing establishment, the Board is unable to find that she has discharged that burden of proof.

⁴ *Abe E. Scott*, 45 ECAB 164 (1993).

⁵ While overwork may give rise to a compensable factor of employment, a claimant must submit sufficient evidence to support her allegations. *William P. George*, 43 ECAB 1159 (1992).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

The December 17, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
November 2, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member