

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANICE M. CROSS and U.S. POSTAL SERVICE,  
POST OFFICE, Bellmawr, N.J.

*Docket No. 97-1856; Submitted on the Record;  
Issued April 19, 1999*

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DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty causally related to her federal employment.

On June 22, 1994 appellant, then a 38-year-old mail processor, filed an occupational disease claim alleging that the conditions of stress and depression resulted from her federal employment. Appellant related this to ongoing harassment and verbal abuse from supervisors and middle management because of her permanent limited-duty status.

Appellant submitted a statement describing incidents and events which she felt contributed to her condition. The employing establishment submitted comments in response to appellant's statement. These matters were considered by the Office of Workers' Compensation Programs and determined that the factors described by appellant were not in the performance of duty. These included: denial of leave; denial of review of medical records; being yelled at by her supervisor; denied transfer to Colorado Post Office; being moved from nixie cage to desk outside cage; and not being used as an acting supervisor.

By decision dated February 8, 1995, the Office rejected appellant's claim for compensation on the basis that the evidence of file failed to demonstrate that the claimed injury occurred in the performance of duty.

By letter dated February 16, 1995, appellant requested an oral hearing before an Office hearing representative.

On October 19, 1995 a hearing was held before an Office hearing representative at which time appellant testified. Appellant's testimony basically restated the matters submitted in her initial statement. The employing establishment resubmitted a copy of their previous response to the above after reviewing a copy of the hearing transcript. No new factual or medical evidence was received into the record.

By decision dated April 22, 1996 and finalized on April 26, 1996, the Office hearing representative affirmed the Office's February 8, 1995 decision on the grounds that the evidence of record failed to establish that appellant sustained any injury in the performance of duty.

By an undated letter which was mailed on August 30, 1996, appellant requested reconsideration. Appellant presented numerous arguments and submitted several documents in support of her argument.

By decision dated December 11, 1996, the Office, after performing a merit review, denied modification of its prior order on the basis that the evidence submitted in support of the request for review was of an immaterial nature and thus insufficient to warrant review of its prior decision.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty causally related to her federal employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>1</sup> When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.<sup>2</sup> In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.<sup>3</sup>

Appellant stated that she was denied the right to review her medical records. The agency responded that there was nothing in her file to indicate a denial of appellant's written request for review of her records as required by regulations. The only evidence of a denial of her requests to obtain information is a statement from her supervisor, stating that he could not honor her request,

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Allen C. Godfrey*, 37 ECAB 334 (1984); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

but that she should go to the medical unit directly with her request. This is an administrative matter and is not considered to be an employment factor. Where the employing establishment's actions complained of are administrative in nature, coverage is afforded only if abuse or error is shown. To determine if abuse or error is shown regarding employing establishment actions, the Board applies a reasonableness standard.<sup>4</sup> There is no evidence that appellant was denied her right to review her medical records. The evidence indicates only that appellant was told to go directly to the medical unit with her request as opposed to going through her supervisors. There is no evidence of error or abuse by the employing establishment in this matter.

Appellant stated that her requests for extended leave were denied. The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.<sup>5</sup> In the present case, appellant has not established that the denial of sick leave was in error or an abusive action on the part of her supervisors.

Appellant has identified incidents of being yelled at by her supervisor. That is, she was of no use to them or the employing establishment, because another employee was talking to her and bringing water into the work area. Appellant provided copies of "affidavits that provide corroborating evidence," signed by what appear to be coworkers and provide solely general statements regarding "abuse, yelling and harassing treatment." Appellant's supervisor denied having yelled at appellant. Inasmuch as the affidavits do not mention specific incidents, no dates are given and the circumstances of specific incidents are not explained, the statements contained within the affidavits are of no value in establishing the existence of even one incident of "abuse, yelling, or harassing treatment."

Appellant indicated that her request for transfer to another location was denied. Frustration from a denial of a transfer is not considered compensable, as it relates to an employee's desire to perform work in a different location and is thus considered self-generated.<sup>6</sup>

Appellant states that she was moved from the nixie cage to a desk outside the cage so that her supervisor could watch her. This allegation was denied by the supervisor. Again, this is an administrative matter and is not considered a factor of appellant's employment.

Appellant reports that her request to work in the capacity as an acting supervisor, 204B, was denied. She argues that she had been informally performing the duties of a supervisor upon request by two tour superintendents. Appellant's supervisor stated that appellant could not perform the full duties of the position. Again, this is an administrative matter and not considered a factor of appellant's employment.

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<sup>4</sup> See *Frederick D. Richardson*, 45 ECAB 454 (1994).

<sup>5</sup> See *Anthony A. Zarcone*, 44 ECAB \_\_\_\_ (Docket No. 92-1406, issued June 9, 1993); *Michael Thomas Plante*, 44 ECAB \_\_\_\_ (Docket No. 92-820, issued February 23, 1993).

<sup>6</sup> *Donald W. Bottles*, 40 ECAB 349 (1988); *Buck Green*, 37 ECAB 374 (1986).

Appellant stated that there was refusal for immediate medical attention by her supervisor. Her supervisor stated that appellant filed a Form CA-2 for an occupational injury involving her hand. Since this was not a traumatic injury, her request for immediate treatment was not given. Appellant was sent to the hospital later during the work shift. Again, this was an administrative determination and not considered a factor of appellant's employment.

Appellant stated that she was returned to work without any work responsibility due to her limitations. Other employees would make comments about her having an easy job, her lack of productivity, using the system, et cetera. Appellant further stated that management was aware of statements by coworkers related to her "having an easy job, her lack of productivity, using the system, etc." Appellant stated that she had difficulty in handling these comments. Reaction to the interaction between an employee and her coworkers is in the performance of duty if the interaction relates to the employee's day-to-day duties, special assignment, or a requirement imposed by the employer.<sup>7</sup> Appellant, however, has made general statements without any supporting evidence to establish the occurrence of the allegations. Thus, this has not been established as a factor of employment.

The issuance of a letter of proposed removal is an administrative matter and is not considered a factor of employment. Appellant argued that "in the [a]rbitration [a]ward over turning the letter of removal, the arbitrator stated that the employing establishment had no (sic.) grounds for such action. Management's decision to remove me from the employing establishment and my subsequent battle to be reinstated caused me tremendous stress." It is noted that appellant has failed to provide a copy of the arbitration decision, or any other materials related to the grievance. In the absence of such evidence, the Board is unable to determine whether the removal was equivalent to agency error or abuse. It is noted that such error or abuse is strongly contradicted by what appears to be a direct quote from the arbitration decision, found in a letter dated June 13, 1996, by an official of the American Postal Workers' union. The letter indicates that, while appellant was being offered her job back, she was not entitled to seniority, not entitled to back pay and not entitled to any accrued benefits. The evidence of record reflects that appellant has not established error or abuse in any of the events claimed related to administrative matters.

Appellant indicates that her work assignments were not consistent with her medical restrictions. Appellant provided a list of job duties. The employing establishment stated that appellant was always assigned work within her restrictions. The Board has held that refusal of an employing agency, if proven, to honor requests from the employee's physician restricting the claimant to sedentary duty, even if related to a nonwork condition, is a factor of employment in the performance of duty.<sup>8</sup> Appellant's list of job duties, however, is uncorroborated and provides no indication when these duties were in effect. As such, appellant has failed to submit evidence to show she was assigned work outside her work restrictions.

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<sup>7</sup> See *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>8</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

In her reconsideration request, appellant submitted an April 23, 1993 limited-duty job offer which, she states, “was never approved by the Department of Labor.” Appellant has not submitted any indication that the employing establishment was required to provide a limited-duty job offer. Additionally, there is no evidence that this job was provided to accommodate the residuals of an injury in the current case. The record reflects that appellant has filed two claims before the Office, case number A02-0675992 for a date of injury of February 17, 1994 (date first aware of disease or illness being listed on Form CA-2) and the current case. Considering the date of the job offer, it is apparent that appellant suffers from preexisting injury which is outside the jurisdiction of the Office.

Appellant also alleged as a factor of employment, working in a health hazard area. At her hearing, appellant testified that her work area was posted with warnings of asbestos being present. She worked in this area from July 1993 to April 1994. The employing establishment reported that there was asbestos in the area; however, air tests results indicated the level of exposure time or the actual level did not exceed the allowable levels. The Board has stated that frustration over not being able to work in a particular environment is not in the performance of duty.<sup>9</sup> In the present case, it has not been established that there was, in fact, a health hazard. Further, the medical evidence is not sufficient to establish a claim for compensation.<sup>10</sup>

In a March 24, 1994 medical report, Dr. Charles R. Clinch, an obstetrics and gynecology physician, requested that appellant be removed from her present work area to an area that has no asbestos-related concerns. Comments are made concerning the warning signs in her workplace. Dr. Clinch states that this problem caused appellant undue mental anguish and she should be deemed unable to work in her requested position until such matters were resolved. He does not give a diagnosis of any condition related to this matter. Dr. Clinch does not indicate appellant was disabled; rather, that she should be deemed unable to work in her present condition until such matters are resolved. This medical evidence does not address whether appellant’s emotional condition was in any way related to the performance of her assigned duties.

Lastly, appellant argues that, after the hearing, the employing establishment supplied the Office hearing representative with documentation and she did not receive copies thereof. An October 26, 1995 letter from the hearing representative indicates, “comments or evidence received without such certification (of concurrent submission to the claimant of any submission to the hearing representative) ... will not be considered.” Review of the hearing representative’s decision reflects that it incorporated none of the evidence submitted by the employing establishment. Accordingly, appellant’s argument is immaterial.

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<sup>9</sup> *Kathleen Walker*, 42 ECAB 603 (1991); *see also Beverly Diffin*, Docket No. 94-2435, issued October 3, 1996.

<sup>10</sup> *See James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

The decisions of the Office of Workers' Compensation Programs, dated December 11 and April 26, 1996, are hereby affirmed.

Dated, Washington, D.C.  
April 19, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member