

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN P. MORGAN and U.S. POSTAL SERVICE,  
POST OFFICE, Arlington, TX

*Docket No. 97-1441; Submitted on the Record;  
Issued December 9, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition causally related to factors of his federal employment.

On July 25, 1994 appellant, then a 49-year-old supervisor, filed an occupational disease claim, alleging that he sustained work-related stress beginning July 19, 1994. In a supplemental statement, however, appellant identified the following causative factors which occurred as early as January 1993. He was involved in numerous verbal altercations with co-supervisor Robert Medina, culminating in three incidents on July 19, 1994 when Mr. Medina criticized appellant for the order in which he wanted to process delayed mail, asserted that appellant was filling in the delayed mail report incorrectly and criticized the production of appellant's employees. Appellant also listed numerous times he requested information from Mr. Medina and either had to repeat himself or was ignored, noting that when Mr. Medina did respond, he was often sarcastic; he was not allowed to take as much overtime as Mr. Medina received; he was criticized for leaving scheduling notes for Mr. Medina and for leaving other notes on behalf of their mutual supervisor Larry M. Scott; and he was criticized for handling time and attendance matters and granting leave for Mr. Medina's employees when required by time restraints. With his request for reconsideration appellant added factors of a changing work schedule, *i.e.*, he often worked two different shifts in one day and his conflict with employees over time and attendance matters as causes of his claimed condition.

In a decision dated April 5, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he failed to establish that Mr. Medina harassed him and therefore had not identified any factors within the performance of duty. By decision dated January 30, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board has duly reviewed the entire case record on appeal and finds that it is not in posture for decision.<sup>1</sup>

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to his condition. 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 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 factors such as an employee's fear of a reduction-in-force or his 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 desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>2</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>3</sup> In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his 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>4</sup>

In the present case, appellant indicated that he had several altercations with Mr. Medina which culminated in three incidents on July 19, 1994 which caused him to leave work. The Board has held that harassment may constitute a compensable factor of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.<sup>5</sup> Mere perceptions or feelings of harassment, however, are not compensable. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment with probative and reliable evidence.<sup>6</sup> The evidence submitted by appellant does not support his allegation of harassment by Mr. Medina. Mr. Scott

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<sup>1</sup> The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on March 19, 1997, the only decision before the Board is the Office's January 30, 1997 decision. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

<sup>4</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>5</sup> See *Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

<sup>6</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

reported that Mr. Medina and appellant had argued about the lack of personnel in one area of the facility, the priorities in processing delayed mail and appellant's method of filling out the delayed mail report. This evidence is not sufficient to establish error or abuse on the part of Mr. Medina. In response to questions regarding the events of July 19, 1994, Mr. Medina indicated that it was not his practice to belittle any employee or coworker. He also indicated that he could be short in his answers and this was especially "c[h]ronic when he was being asked the same questions daily." He suggested that appellant was extremely forgetful, would hide out in the office during critical periods and that appellant was less than competent in the job which is his primary duty; "however, this does not mean that [he] purposely tried to treat [appellant] with any less respect than any other supervisor or peer." Although the evidence substantiates that there was a disagreement between Mr. Medina and appellant on the date in question, this does not rise to the level of harassment. Thus, appellant's reaction to what he believed to be harassing remarks or conduct by Mr. Medina is deemed to be self-generated and is not compensable.<sup>7</sup>

Nonetheless, appellant also indicated that he sustained stress as a result of monitoring time and attendance for employees and due to changing work schedules in the performance of his job duties. A number of employees indicated that appellant encountered difficulties due to his time and attendance duties. In addition, Mr. Scott reported that he questioned appellant concerning whether the duties were too much and appellant said no. Appellant and a number of employees also reported that appellant was subjected to complaints and grievances in performing this duty. A review of appellant's position description reveals that appellant was required to have the "ability to establish and adjust work schedules and assign hours to meet service requirements," and have the "ability to maintain records related to work hours, accident and injury occurrences and costs and personnel time and attendance."<sup>8</sup> Thus, appellant has established factors of employment related to his regular job duties, *i.e.*, difficulty with maintenance of time and attendance matters. Appellant has also alleged that he was required to work multiple shifts in one day and this potentially may be another compensable factor of employment as shift changes may constitute a factor of employment.<sup>9</sup> Therefore, on remand the Office should develop the evidence relevant to this point. The Office should obtain information concerning whether appellant worked a set work schedule or whether his work schedule changed due to his required duties.

As appellant has established a compensable factor of his employment in relation to his maintenance of time and attendance matters, the case will be remanded to the Office for further development and issuance of an appropriate decision.

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<sup>7</sup> See *Helen V. Mills*, 33 ECAB 1458 (1982).

<sup>8</sup> One statement indicates that appellant was responsible for time and attendance of employees outside his direct line of supervision.

<sup>9</sup> See *Dodge Osborne*, 44 ECAB 849 (1993); *John J. Granieri*, 41 ECAB 916 (1990).

The decision of the Office of Workers' Compensation Programs dated January 30, 1997 is hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.  
December 9, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member