

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELMER CAMPBELL and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, Richmond, CA

*Docket No. 97-1573; Submitted on the Record;  
Issued December 2, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained a physical or emotional injury while in the performance of duty on August 22, 1996; and (2) whether the Office of Workers' Compensation Programs properly denied his claim for continuation of pay.

On August 22, 1996 appellant, then a 47-year-old mail handler, alleged that he sustained injury that day when he was physically stopped by his supervisor, Mr. Ron Engkvist, from entering the front door of the employing establishment premises.<sup>1</sup> Appellant alleged that he was shoved backwards by Mr. Engkvist, sustaining injury to his back, neck and pain across the stump of his right leg in maintaining his balance.<sup>2</sup> Appellant initially filed an occupational disease claim alleging emotional stress as a result of the incident and other harassment by management on August 23, 1996. He subsequently filed a claim for traumatic injury on January 22, 1997. The Office subsequently combined the claims.

The employing establishment controverted appellant's claim, noting that he had entered the employing establishment premises to clock in at approximately 6:33 a.m. or 6:55 a.m. but had exited from the building to move his car to an area assigned for handicapped employees as employees from the previous tour left.<sup>3</sup> On the date in question, August 22, 1996, the U.S. Postal Inspection Service was conducting an inspection of larger personal items of the Tour One employees as they exited from the premises at approximately 7:00 a.m. The employing establishment noted that Mr. Engkvist acknowledged there was physical contact with appellant, but indicated that appellant had walked into Mr. Engkvist's upheld hands and there was no force directed towards appellant. In an August 22, 1996 statement, Mr. Engkvist noted that at approximately 6:45 a.m. he met appellant "walking into and 'Exit' door created for the Tour One

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<sup>1</sup> The record indicates the incident occurred at 6:45 a.m. and appellant's regular tour of duty was listed as 6:30 a.m. to 3:00 p.m. Wednesday through Sunday.

<sup>2</sup> The record indicates appellant wears a right leg prosthesis.

<sup>3</sup> The employing establishment noted that handicapped parking was provided on a first come, first served basis.

bag search due to commence. Mr. Campbell opened the door and I stood in the way. As he walked into me, I put my hands up. We made contact.” Engkvist stated that he told appellant he could not enter through the door as the search was being conducted.

By decision dated March 13, 1997, the Office denied appellant’s claim on the grounds that the August 22, 1996 incident did not arise in the performance of duty. The Office noted “that both versions of what happen[ed] are at odds and that no other person has provided a statement which, corroborates or discounts either version” and found appellant was not forearmed across his chest by Mr. Engkvist as alleged.

In a March 17, 1997 decision, the Office denied appellant’s claim for continuation of pay. The Office found that continuation of pay was not payable in occupational disease cases and that his claim of traumatic injury was not filed until January 22, 1997, more than 30 days after the August 22, 1996 employment incident.

In a June 18, 1997 decision, the Office denied appellant’s request for reconsideration.

The Board finds that the August 22, 1996 employment incident arose in the performance of duty.

With regard to appellant’s claim for a physical condition arising from the August 22, 1996 employment incident, the Board notes that as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment while the employee is going to or from work or before or after working hours, or at lunch time, are compensable. The course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts. What constitutes a reasonable interval depends not only on the length of time involved but also on the circumstances occasioning the interval and the nature of the employee’s activity.<sup>4</sup>

In the present case, there is no factual dispute that appellant, whose tour of duty was from 6:30 a.m. to 3:00 p.m., had arrived at work at the employing establishment premises and signed in at 6:33 a.m. Thereafter, at approximately 6:50 a.m., a physical contact occurred between appellant and his supervisor in or near the lobby at a doorway. The physical contact was acknowledged by Mr. Engkvist as an attempt to block appellant’s entrance. He stated that he saw appellant walking through an “exit” door and stood in his way, putting his hands up to stop appellant from entering the area where the search of employee bags was being conducted. The evidence of record establishes that a physical contact occurred between appellant and Mr. Engkvist on August 22, 1996, while he was engaged in preparatory activities on the premises of the employing establishment. For this reason, the Board finds that appellant has submitted sufficient evidence to establish that he experienced the employment incident of August 22, 1996, a physical contact with Mr. Engkvist, at the time, place and in the manner alleged. As the Office has not considered the medical evidence submitted in this case, it will be

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<sup>4</sup> See *Dwight D. Henderson*, 46 ECAB 441 (1995); *Bernard Redmond*, 45 ECAB 298 (1994); *Timothy K. Burns*, 44 ECAB 125 (1992).

remanded to the Office for further development to determine whether the August 22, 1996 employment incident caused a personal injury and the nature and extent of any disability.<sup>5</sup>

With regard to appellant's claim for an emotional condition, the Board finds that appellant has not established that he sustained an emotional condition causally related to factors of his 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 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 comes within coverage of the Federal Employees' Compensation Act. The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular work environment or to hold a particular position or secure a promotion. Disabling conditions resulting from an employee's feelings of job insecurity, or the desire for a different job does not constitute personal injury sustained within the performance of duty within the meaning of Act.<sup>6</sup>

Appellant first attributed an emotional condition from his physical contact with Mr. Engkvist in the August 22, 1996 incident. While the Board has recognized that physical contact arising in the course of employment may give rise to a compensable factor of employment,<sup>7</sup> the Board finds that appellant has not established a *prima facie* claim in this regard, as he has not presented any medical evidence establishing treatment for or diagnosis of an emotional reaction pertaining to the accepted employment incident. Further, appellant made general allegations of harassment by his supervisor and management pertaining to the availability of handicapped parking at the employing establishment. The actions of a supervisor, which an employee characterizes as harassment may constitute a compensable factor of employment; however, there must be some evidence that the implicated acts of harassment did, in fact, occur. Mere perceptions of harassment are not compensable under the Act.<sup>8</sup> Appellant's allegations in this regard are nonspecific as to those incidents he believes constituted harassment on the part of management. Regulations of the employing establishment's parking lot and the availability of parking facilities is an administrative matter unrelated to appellant's employment duties. There is insufficient evidence to establish any error or abuse on the part of the employing establishment in the "first come, first served" policy pertaining to the handicapped parking spaces. For these reasons, the Board finds that appellant has not established that he sustained an emotional condition causally related to factors of his federal employment.

The Board finds that the Office properly denied appellant's claim for continuation of pay.

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<sup>5</sup> The record indicates appellant was diagnosed with a lumbosacral strain and right knee sprain and returned to modified work on October 10, 1996.

<sup>6</sup> See *Sharon R. Bowman*, 45 ECAB 187 (1993); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> See *Helen Casillas*, 46 ECAB 1044 (1995).

<sup>8</sup> *Jimmy Gilbreath*, 44 ECAB 555 (1993).

Section 8118 of the Act provides for the payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within 30 days after the injury.<sup>9</sup> The Office's implementing federal regulations provide that in order to receive continuation of pay, an employee must have sustained a traumatic injury, must file a claim for a period of wage loss within 30 days of the injury on an approved form and the disability for which the employee is claiming must occur within 90 days from the date of injury.<sup>10</sup>

In the present case, appellant did not file a Form CA-1, notice of traumatic injury, until January 22, 1997, which was more than 30 days following the August 22, 1996 employment incident. As the traumatic injury claim was not timely filed, appellant's claim for continuation of pay is barred by the applicable 30-day time limitation provision and he is not entitled to continuation of pay.<sup>11</sup>

The March 13, 1997 decision is affirmed, in part as to the denial of appellant's claim of an emotional condition and set aside, in part, to find that the August 22, 1996 employment incident occurred as alleged. The March 17, 1997 decision denying continuation of pay is affirmed.

Dated, Washington, D.C.  
December 2, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

Michael E. Groom, Alternate Member, concurring in part and dissenting in part:

I concur with the conclusion of the majority that appellant has failed to establish a *prima facie* claim for an emotional condition and that the Office properly denied his claim for continuation of pay as his traumatic injury claim was not timely filed under the applicable

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<sup>9</sup> See 5 U.S.C. § 8118.

<sup>10</sup> See 20 C.F.R. § 10.201(a).

<sup>11</sup> See *Sandra N. Phillips*, 43 ECAB 311 (1991).

statutory and regulatory provisions.

With regard to whether appellant sustained a physical injury while in the performance of duty on August 22, 1996 as alleged, I would affirm the denial of the claim based on the Board's decision in *Melvin Silver*.<sup>1</sup> The facts establish that appellant entered the employing establishment premises, signed at work and then returned to the parking lot to move his automobile to a handicapped parking space. Thereafter, he was stopped from entering a doorway and came into contact with Mr. Engkvist. I would find that appellant's return to the parking lot to move his car was in the nature of a personal errand and convenience to appellant and that he had not yet taken up any activities incidental to his regular or specially assigned job duties at the time of the August 22, 1996 employment incident. For this reason, I would find that the physical contact with Mr. Engkvist did not occur while appellant was in the performance of duty and would affirm the March 13, 1997 denial of his claim.

Michael E. Groom  
Alternate Member

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<sup>1</sup> 45 ECAB 677 (1994).