

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILINDA N. STANDER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Sacramento, CA

*Docket No. 97-2581; Submitted on the Record;
Issued December 14, 1999*

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 in establishing that she sustained an emotional condition while in the performance of duty.

On July 28, 1989 appellant, then a 40-year-old letter sorting machine operator, filed an occupational disease claim, alleging that she sustained major depression and anxiety that was causally related to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for major depression, dysthymia and temporary neurotic depression.¹ On February 1, 1996 appellant filed a claim for a recurrence of disability beginning January 4, 1996, alleging stress caused by memories of harassment. On March 29, 1996 appellant filed an occupational disease claim, alleging she sustained work-related stress and anxiety/depression which she first became aware of and realized was causally related to factors of her federal employment on January 5, 1996. Appellant stopped work. In a supplemental statement, appellant identified the following as causative factors of her claimed condition: the time she spent settling her EEO claim with the employing establishment was stressful; the employing establishment used delaying tactics in settling her EEO claim and in restoring her annual and sick leave as required under the settlement agreement; after surgery in June 1995, the employing establishment required her to have a medical release prior to returning to work; Jerald Cager, a contact person for her EEO claim within the employing establishment, intimated that her shortened leave situation would be resolved, however, the certified letter concerning this matter she received did not change her leave accounting; Mr. Cager refused appellant's request for a meeting in this matter and recommended she have her attorney put any concerns in writing; she was fearful of returning to work; a manager, Bruce Yockey, did not speak to her when she spoke to him upon returning to work; her immediate supervisor Stacy DiLeo did not appear to

¹ Appellant received compensation for temporary total disability. After the employing establishment reached a settlement agreement with appellant in relation to her Equal Employment Opportunity (EEO) claim, her compensation was terminated. Appellant was released for work and was placed on administrative leave effective March 18, 1995. Appellant used annual and sick leave until she returned to work on August 22, 1995.

like her and this reminded her of prior mistreatment by her past supervisor; she received a phone call on the work floor which was unusual and this caused undue attention; Ms. DiLeo placed her correction rate on her machine and this was improper; Ms. DiLeo implied she was not working and questioned her concerning where she was going when she was not at her work area; coworkers noted and questioned management's disparate treatment of appellant; and her request for advanced sick leave after she claimed a recurrence of disability was denied and she was charged with absence without leave.

In a decision dated May 21, 1997, the Office denied appellant's claim on the grounds that the evidence did not establish that her claimed emotional condition arose while in the performance of duty.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that she sustained an emotional condition while in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her 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 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 desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² 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.³ 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.⁴

In the present case, appellant has not submitted sufficient evidence to establish that she sustained an emotional condition while in the performance of duty. Specifically, all issues relating to appellant's EEO claim and appellant's reaction to the process of filing and settling her claim are not compensable under the Act as the filing of an EEO claim was not part of

² *Lillian Cutler*, 28 ECAB 125 (1976).

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

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

appellant's regularly or specially assigned duties.⁵ Thus, appellant's reaction to this claims' process is deemed to be self-generated. Appellant's reaction to the employing establishment's actions concerning restoration of her annual and sick leave as part of her EEO settlement agreement is also not compensable since this is an administrative function and appellant has not established error or abuse by the employing establishment with respect to this leave issue. Similarly, appellant's reaction to the employing establishment's denial of her request for advanced sick leave after her claimed recurrence of disability and her reaction to the employing establishment's request that she submit a medical release prior to returning to work are also not compensable under the Act as these are personnel matters and appellant has not submitted any evidence to establish that the employing establishing erred or acted abusively.⁶ Appellant also contended that Ms. DiLeo did not like her and acted improperly in critiquing appellant's work, questioning appellant's movements while at work and in placing appellant's error rate on her machine while she was working. Appellant's complaints concerning the manner in which her supervisor performed her duties as a supervisor or the manner in which she exercised her supervisory discretion fall, as a rule, outside of compensable factors of employment.⁷ Her complaints are analogous to frustration over not being allowed to work in a particular job environment and are therefore not compensable. Finally appellant generally alleges that she was harassed and that this harassment was noticed by some of her coworkers. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that they implicate disputes and incidents are established as arising in and out of the performance of duty.⁸ Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.⁹ Appellant failed to provide any such probative and reliable evidence in the instant case. Her general allegation of harassment lacks specificity and appellant has not submitted any documentation to support her allegation that coworkers questioned her concerning management's treatment or that the employing establishment treated her in an inappropriate manner. As appellant has not established any compensable factors of employment under the Act, she has not established that she sustained an emotional condition within the performance of duty.

⁵ *Lillian Cutler*, *supra* note 2.

⁶ *Thomas D. McEuen*, *supra* note 4.

⁷ *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

⁸ *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

The decision of the Office of Workers' Compensation Programs dated May 21, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 14, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member