

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VINCENT ZAFFUTO and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 98-1252; Submitted on the Record;  
Issued December 17, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

In the present case, appellant, a customer service supervisor, filed a claim on October 2, 1995, alleging that he sustained an emotional condition causally related to his federal employment. In a statement dated October 2, 1995, appellant asserted that he had been discriminated against by his supervisors, specifically Mr. Young and Mr. Strandberg. Appellant alleged that he had been unjustly removed from several positions and denied promotions. The record contains a statement from Mr. Young, who indicated that appellant felt he was being harassed by not being allowed to work overtime and not having opportunities for higher level assignments. Mr. Young stated that he explained to appellant that several supervisors were not being allowed to work overtime due to their high earner status, that appellant had been detailed to higher level positions, and that appellant had always been treated with respect. By decision dated December 29, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had not established any compensable factors of employment.

In a statement submitted at an October 22, 1996 hearing before an Office hearing representative, appellant stated that he was not allowed to do his job as he knows how to do it, asked to take disciplinary action against employees because his supervisors did not like them, during his first two months at Interbay station he had no duties or responsibilities, was moved to different stations without warning and had been denied advanced sick leave.

In a decision dated January 16, 1997, an Office hearing representative affirmed the December 29, 1995 Office decision. Following a request for reconsideration, the Office reviewed the case on its merits and denied modification by decision dated January 22, 1998.

The Board has reviewed the record and finds that appellant has not established an emotional condition in the performance of duty.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.<sup>1</sup> To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

Workers' compensation law does not apply 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. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>3</sup>

In the present case, appellant's primary allegation is that he was subject to discrimination and abusive behavior by his supervisors, in that they would remove him from one position and move him to another station, not allow him to perform his job properly and deny him promotions for no apparent reason. With respect to a claim based on discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as discrimination may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>4</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>5</sup>

The Board also notes that with regard to specific administrative or personnel actions, these are considered administrative functions of the employer rather than duties of the

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>5</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

employee.<sup>6</sup> An administrative or personnel matter may be a factor of employment only where the evidence discloses error or abuse by the employing establishment.<sup>7</sup>

In the present case, appellant has not submitted probative evidence supporting his allegations of abusive behavior. There is, for example, no evidence or findings in an Equal Employment Opportunity (EEO) or other administrative agency proceeding.<sup>8</sup> The witness statements of record indicate that appellant was visibly upset on September 30, 1995, but there are no witness statements or other probative evidence to substantiate appellant's allegations of erroneous or abusive actions with respect to transfers, promotions, denial of leave, overtime or other administrative matters. It is, as noted above, appellant's burden to establish his claim with probative and reliable evidence. Appellant has not met his burden in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>9</sup>

The decision of the Office of Workers' Compensation Programs dated January 22, 1998 is affirmed.

Dated, Washington, D.C.  
December 17, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>6</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>7</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>8</sup> It is not clear whether appellant filed a formal complaint of discrimination in this case.

<sup>9</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).