

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANTE LEONARDI and U.S. POSTAL SERVICE,
POST OFFICE, Wickliffe, OH

*Docket No. 98-1805; Submitted on the Record;
Issued December 29, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable employment factors.

In the present case, appellant filed a claim on October 22, 1996, alleging that he sustained an emotional condition causally related to stressful work factors. Appellant asserted that he was constantly harassed by his supervisors about productivity.

In a decision dated April 17, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established an emotional condition in the performance of duty. By decision dated March 20, 1998, an Office hearing representative affirmed the denial of the claim.

The Board has reviewed the record and finds that appellant has not established an employment-related emotional condition.

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 her federal employment.¹ 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.²

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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.³

Appellant has alleged that he was subject to a general pattern of harassment by his supervisors, in that they would constantly tell him to pick up the pace and sort faster. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment 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.⁴ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁵

In the present case, there is no probative evidence of harassment. The postmaster indicated that clerks were expected to case mail at a certain hourly rate and employees were directed as necessary. The record contains no findings of harassment by an administrative agency and no other probative evidence of harassment is found in this case.

With respect to specific incidents alleged by appellant, the Board finds that there is insufficient evidence to substantiate a compensable factor of employment. Although the handling of personnel matters is generally related to employment, it is an administrative function of the employer, not a duty of the employee.⁶ An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.⁷

In this case, appellant alleged that in May 1996 he was threatened with removal by a supervisor, Mr. Byron Coats. According to appellant, he was told that what was happening to other employees was none of his business and "if I did n[o]t get the picture he would give me a letter of removal." The evidence of record, however, is not sufficient to establish error or abuse by the supervisor. Appellant indicated that he told the postmaster of the incident, but apparently

³ *Lillian Cutler*, 28 ECAB 125 (1976).

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

⁵ *Helen P. Allen*, 47 ECAB 141 (1995).

⁶ *Anne L. Livermore*, 46 ECAB 425 (1995).

⁷ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

he did not do so in writing, and the postmaster could not recall details of the incident. There is no indication that a grievance or other complaint was filed and a statement from the employing establishment's compensation specialist asserts that Mr. Coats denied threatening appellant. Based on the evidence of record, the Board is unable to find probative evidence of error or abuse by the supervisor in a May 1996 incident.

In his December 20, 1996 statement, appellant discusses two incidents in October 1996 involving another supervisor, Mr. Strnad. One incident involved the supervisor stacking mail trays in a manner appellant thought unsafe, another involved the supervisor criticising appellant for "wandering around." Even if the allegations are accepted as factual, there is nothing on the face of these allegations that would constitute harassment or abusive behavior.

The final incident discussed by appellant occurred on the day of the filing of the claim, October 22, 1996. In a November 21, 1996 statement, appellant indicated that when he came to work there were more supervisors than needed, and when he completed a sick leave request, it was disapproved. As noted above, personnel matters are only compensable to the extent that error or abuse has been shown. The postmaster indicated that leave was disapproved in the absence of medical evidence from an attending physician and there is no evidence establishing error or abuse by the employing establishment on October 22, 1996.

Appellant submitted a statement signed by several coworkers that contained a brief and general statement that there were stressful incidents between appellant and his supervisors, but no specific details were provided. The Board finds that there is no probative evidence of harassment or abusive behavior by the employing establishment in this case.

It is noted that appellant's statements assert that the number of clerks at the employing establishment had been reduced over a period of time and there were not enough clerks to perform the work required. To the extent that appellant is claiming overwork as contributing to an emotional condition, this could be a compensable factor if substantiated by the record.⁸ Appellant does not, however, provide specific details regarding the performance of his job duties and overwork. The postmaster indicated that new equipment had reduced the amount of mail to be manually sorted and therefore the number of clerks was reduced. In addition, one of appellant's allegations is that the supervisors would perform some of the duties of a clerk, in violation of the employment contract. Appellant indicated that this revealed how much work needed to be done, but it does not support a claim for overwork, since the supervisors are alleged to be performing some of appellant's duties and therefore presumably reducing the amount of mail sorting that appellant must perform. To the extent that appellant is claiming error by the supervisors, the record contains an arbitrator's decision dated July 28, 1994, finding that although the postmaster could perform bargaining unit work as required by the workload, she had erroneously done so on a daily, routine basis. There is no finding of error with respect to the 1996 events discussed by appellant,⁹ moreover, even if error were established, the medical evidence would have to explain how such error contributed to an emotional condition.

⁸ See *William P. George*, 43 ECAB 1159 (1992).

⁹ Appellant submitted a general statement signed by coworkers that the postmaster had been observed sorting

The Board accordingly finds that the evidence of record is not sufficient to substantiate a compensable factor of employment as contributing to an emotional condition. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁰

The decision of the Office of Workers' Compensation Programs dated March 20, 1998 is affirmed.

Dated, Washington, D.C.
December 29, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

mail. As noted above, supervisors may sort mail as required by the workload; it is only if the work is performed routinely that it is a violation of the employment contract. The record does not contain a finding of error or sufficient evidence to establish error by the supervisors during the period discussed by appellant.

¹⁰ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).