

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VICTOR A. COFFEY and U.S. POSTAL SERVICE,  
POST OFFICE, Patchogue, N.Y.

*Docket No. 97-925; Submitted on the Record;  
Issued February 19, 1999*

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DECISION and ORDER

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

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

In the present case, appellant filed a claim on February 9, 1994 alleging that he sustained an emotional condition in the performance of duty. Appellant asserted on the claim form that he had been terminated from his job, had been required to work with a bad back and had been subject to racial prejudice. The record indicates that appellant had not worked since December 1987.

By decision dated November 21, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury had not been established. Following an August 29, 1995 hearing, an Office hearing representative affirmed the denial of the claim by decision dated December 12, 1995. In a decision dated April 17, 1996, the Office reviewed the case on its merits and denied modification. By decision dated December 13, 1996, the Office determined that the evidence submitted was insufficient to warrant merit review of the claim.

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>

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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).

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 this case, the Office has accepted that two of the employment factors identified by appellant have been established as compensable factors: (1) the erroneous administrative actions of the employing establishment regarding the termination of appellant's employment;<sup>4</sup> and (2) having to unload trucks in derogation of appellant's medical restrictions. The Board is unable to find any additional employment factors which are compensable and have been substantiated by the record. With regard to allegations of discrimination based on race and physical handicap,<sup>5</sup> the Board has held a claimant must establish a factual basis for a claim of discrimination by supporting the allegations with probative and reliable evidence.<sup>6</sup> Mere perceptions of discrimination do not constitute a compensable factor of employment.<sup>7</sup> In this case, the November 15, 1991 decision, rendered in the claim before the MSPB, found that discrimination based on race or handicap had not been established. On appeal, an August 7, 1992 decision from the Equal Employment Opportunity Commission concurred with the finding of no discrimination. The Board finds that the record does not contain probative evidence of discrimination in this case. Although appellant has asserted that he was subject to verbal abuse at the employing establishment, there is no probative evidence of record establishing the alleged incidents.

The Board therefore finds that the Office properly identified the compensable work factors that have been substantiated by the record. Appellant's burden of proof is not discharged by establishing compensable factors of employment.<sup>8</sup> In order to establish his claim, appellant must submit probative medical evidence which provides a reasoned opinion as to causal

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

<sup>4</sup> An administrative law judge, in a decision dated November 15, 1991, found that the employing establishment had erred in failing to give adequate notice and an opportunity to respond with respect to appellant's removal from the employing establishment. It is well established that error or abuse by the employing establishment in an administrative matter is a compensable work factor; *see Helen Casillas*, 46 ECAB 1044 (1995).

<sup>5</sup> Appellant argued in the Merit Systems Protection Board (MSPB) proceeding that he was handicapped due to a back condition.

<sup>6</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>7</sup> *Sharon R. Bowman*, 45 ECAB 187 (1993).

<sup>8</sup> *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

relationship between a diagnosed condition and the accepted employment factors.<sup>9</sup> The record in the present case does not contain a reasoned opinion on causal relationship. In a report dated June 16, 1988, Dr. Robert G. Roth, a neurologist, provided a history of treatment and noted that appellant “had psychiatric problems in association with the pain and with the loss of his job.” Dr. Roth does not provide additional detail or a reasoned opinion relating a diagnosed condition to compensable work factors. In a report dated January 16, 1996, Dr. Choong Yul Cho, a psychiatrist, diagnosed anxiety disorder and stated that “sessions have focused chiefly on patient’s need for medical evidence that he has been a victim of discrimination. It is possible that patient’s experience with the [employing establishment] and his loss of employment have caused him to suffer anxiety. However, our contact with [appellant] has been limited and our diagnosis is, at best, an impression which could only be confirmed by further history.” The Board notes that discrimination has not been accepted as a factor of employment in this case. Moreover, Dr. Cho did not provide a complete history or a reasoned opinion on causal relationship with an accepted compensable factor of employment.

The remainder of the medical evidence failed to provide an opinion on the relevant issues in this case. In the absence of probative medical evidence as to causal relationship between a diagnosed emotional condition and a compensable factor of employment, the Board finds that appellant has not met his burden of proof to establish the claim.

The decisions of the Office of Workers’ Compensation Programs dated December 13, 1996 and April 17, 1996 are affirmed.

Dated, Washington, D.C.  
February 19, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>9</sup> *Id.*