

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES DELL and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, N.J.

*Docket No. 97-1110; Submitted on the Record;
Issued January 27, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

The Board has duly reviewed the evidence of record and finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, as alleged.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially-assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

On November 9, 1995 appellant, then a 60-year-old clerk, filed an occupational claim, Form CA-2, for an emotional condition he sustained on November 3, 1995. He stated that he experienced physical symptoms of stomach pain, vomiting, gastritis and ulcers as a result of stress. Appellant underwent a urodynamics test on November 13, 1995 and cystoscopy on November 14, 1995 for his problems. In March 1992 appellant sustained a work-related foot injury which caused him to miss 10 weeks of work and for which he underwent surgery.

¹ *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

² *Michael Ewanichak*, 48 ECAB ____ (Docket No. 95-451, issued February 26, 1977); *Lillian Cutler*, 28 ECAB 125 (1976).

Subsequently, appellant returned to light-duty work.³ Appellant alleged that in September 1992 he learned that his request for advanced sick leave which he had made for the time missed for his foot surgery had not been granted by his supervisor, Marion Steed. A memorandum from the employing establishment dated September 29, 1992 shows that his request for advanced sick leave was denied. Appellant was also denied advanced sick leave on December 11, 1995, apparently for a leave request he made on November 1, 1995. Appellant stated that on his birthday he received a letter of warning from Ms. Steed dated November 16, 1995 regarding his absences from work. Appellant stated that the letter was later rescinded but he felt he had been harassed.

Appellant stated that Ms. Steed did not cooperate in completing the workers' compensation forms for his foot problem. Appellant stated that in late 1992 he tried to work full duty and Ms. Steed harassed him "by innuendo and belittling words" stating that he was not hurt and should pick up sacks and boxes. Appellant stated this caused his injured foot to hurt, and compelled him to take five days of sick leave over a period of three months.

Appellant also stated that in late 1992 Ms. Steed was upset that appellant was on light duty, that she assigned him to work the computer but because a coworker was away 3 or 4 times a week he was compelled to lift bags, as much as 140 to 150 sacks on one night, and move skids. Appellant stated his foot pain increased and finally, another supervisor, Robert M. Vukas approved a "sit-down" job for him. In 1995 appellant stated that Ms. Steed, who was not his supervisor at the time, was assigned to work behind him and told him to pick up trays of mail and move them which he told her was not within his light-duty restrictions. Appellant stated that she said he was lying and tried to goad him into a shouting match. When appellant complained to Mr. Vukas, he stated that Ms. Steed was not his boss and he should ignore her.

Appellant stated that on November 3, 1995, Ms. Steed who was then his supervisor, ordered him to turn a fan off causing the air to be stale, called him a name three times while he was carrying mail, and ordered him to perform duties that were outside his light-duty restrictions. Specifically, he stated that Ms. Steed wanted him to put a color code on a BMC [Bulk Mail Center] cage which he said was usually done by another coworker. When he told her it was not his job, she "ordered him to do it like [he] was a dog or something." He also stated that she ordered him to take a full tray of mail and sleeve and label it and challenged him when he said he could not do it. Appellant stated that on November 6, 1995, Ms. Steed "started again with her condescending tone and used the same tactics." He stated management condoned Ms. Steed's harassment of him by making her his supervisor on November 13, 1995.

By letter dated November 16, 1995, Ms. Steed denied that she was appellant's supervisor when he requested advanced sick leave and found no information about his sick leave request. The compensation claim for his foot was filled out by another supervisor. She stated that employees are requested to ask for help when lifting heavy sacks and to only lift according to their capacity. Ms. Steed stated that she was told to assign appellant to a computer and a "casual" would lift sacks for him. She stated that she and two other coworkers asked appellant to turn the fan off. Ms. Steed stated that appellant "was asked" to put a color code on an "APC"

³ Appellant filed a claim for his foot problem which was accepted.

and to sleeve a tray of mail, and that when he said he could not lift the tray of mail, he was shown how to use a U-Cart to remove the tray from a pile wagon to an “APC.” She stated that asking an employee to share in the daily responsibilities of the section is not harassment.

By letter dated November 16, 1995, Mr. Vukas stated that he saw no evidence of harassment by Ms. Steed on November 3, 1995. He stated that he told appellant that he would apprise Ms. Steed of his duty limitations to ensure that they were not exceeded. Mr. Vukas stated that appellant had performed much more physically demanding tasks while under his supervision than he was asked to perform by Ms. Steed. Mr. Vukas stated that he believed appellant’s harassment and stress claim against Ms. Steed stemmed from a personal dislike and incorrect assessment of her interactions with him since 1984.

By letter dated November 30, 1995, the Office informed appellant that additional information was required to establish his claim.

Appellant submitted evidence of a Step 2 grievance he had filed with the union against Ms. Steed alleging harassment and discrimination because of his physical limitation, age, race and color and a complaint he filed with the Equal Employment Opportunity Commission (EEOC) but he had received no response to them at that time.

An investigation was performed by the employing establishment in February 1995 on appellant’s medical history which revealed that appellant had had stress and related gastrointestinal problems as early as March 1990 and had sought medical treatment for these problems on October 19, 1995. When confronted with records of his prior stomach problems, appellant said, “so what,” and stated that on November 3, 1995 he sustained new symptoms.

By decision dated May 20, 1996 the Office denied appellant’s claim.

Despite the Office’s informing appellant that more evidence was needed to establish his claim, appellant has not presented the requisite evidence. Appellant’s complaints that his advanced leave requests were denied address administrative matters and therefore do not constitute factors of employment unless appellant shows management acted abusively or unreasonably in denying him leave.⁴ Appellant has not made this showing. Further, being issued a letter of warning by Ms. Steed as a disciplinary measure constitutes an administrative matter and appellant has not shown management abused its discretion or acted unreasonably in this regard.⁵ Appellant’s filing a grievance with the union and a complaint with the EEOC against Ms. Steed for discrimination and harassment do not by themselves establish harassment in fact occurred. Further, the outcome of these actions were not presented in the record.⁶

Appellant’s specific complaints that Ms. Steed called him names, spoke to him in a derogatory fashion, ordered him to perform work outside his restrictions, and that management

⁴ See *Leroy Thomas*, 46 ECAB 946, 951 (1995); *Daryl Davis*, 45 ECAB 907, 911 (1994).

⁵ See *Barbara J. Nicholson*, 45 ECAB 803, 809 (1994).

⁶ See *Martha L. Cook*, 47 ECAB 226 (1995).

condoned the harassment by appointing Ms. Steed his supervisor was not supported by corroborating evidence and was denied by Ms. Steed and Mr. Vukas. When an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁷ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁸ A claim based on verbal altercations or difficult relationships with a supervisor must be supported by evidence of record.⁹ In the instant case, appellant has not presented sufficient evidence to substantiate his allegations of harassment by Ms. Steed or management.

The Board finds that appellant has failed to allege a compensable factor of employment. Since no compensable factors have been established, it is not necessary to address the medical evidence.¹⁰

The decision of the Office of Workers' Compensation Programs dated May 20, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 27, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Michael Ewanichak*, 48 ECAB ____ (Docket No. 95-451, issued February 26, 1977).

⁸ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁹ *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

¹⁰ *Id.*

