

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAZEL L. SKINNER and U.S. POSTAL SERVICE,
DALLAS PROCESSING DISTRIBUTION CENTER, Dallas, Tex.

*Docket No. 97-1252; Submitted on the Record;
Issued January 25, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional injury in the performance of duty.

On May 30, 1996 appellant, then a 43-year-old letter sorting machine clerk, filed a claim for stress and depression which she claimed was causally related to her employment. In an October 17, 1996 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not sustain an injury in the performance of duty. In a December 3, 1996 merit decision, the Office denied appellant's request for modification of the prior decision.

The Board finds that appellant has not established that she sustained an injury in the performance of duty.

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 the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ 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.² In these cases, the

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB

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.³

Appellant contended that she was subjected to harassment and disparate treatment in that her supervisor would allow favored coworkers to leave their machines and engage in private conversations while her private conversations with coworkers were severely restricted. She indicated that on one occasion a coworker was allowed to leave early for lunch while the supervisor complained when appellant left her station to go to the bathroom. Appellant stated that she was required to complete paperwork to document any time she was late while she observed coworkers coming to work up to 15 minutes late without penalty or requirement to complete paperwork. She related that on one occasion when her machine jammed, she called for her supervisor who then verbally reprimanded appellant for not calling for the mechanics herself. Appellant also contended that she was passed over for overtime. She indicated that the supervisor would run edits on her and then tell her that she could not key mail very well. Appellant stated that on one occasion her supervisor denied her request for emergency leave without pay when her mother was going into the hospital for surgery but a superior granted the leave. The record shows that appellant filed a grievance in connection with her claims of disparate treatment and denial of overtime but the grievance was settled.

The supervisor denied that appellant had been denied overtime improperly, stating that overtime was based on seniority. She stated that appellant's keying performance was below proficiency because she would be talking or asleep while edits were being performed. The supervisor denied subjecting appellant to disparate treatment.

Appellant made a general allegation that her emotional condition was due to harassment by her supervisor. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁴ Appellant has not submitted any evidence, such as eyewitness statements or subsequent administrative decisions, to show that she was actually subjected to harassment. Therefore, this factor of employment cannot be accepted as having occurred as alleged.

374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Joan Juanita Greene*, 41 ECAB 760 (1990).

Appellant contended that she found the edits of her performance to be stressful and affected the performance of her duties. The monitoring of appellant's performance through edits is an administrative action. There is no evidence that these edits were performed improperly or were meant to be abusive of appellant. The edits of her performance therefore cannot be considered a compensable factor of her employment. Appellant's complaints about granting of leave and scheduling of overtime are also administrative actions of the employing establishment. She has not shown that the actions of her supervisors in these situations were erroneous or abusive. These factors, therefore, cannot be considered compensable factors of employment.

The decisions of the Office of Workers' Compensation Programs dated December 3 and October 17, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 25, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member