

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA DORSETT and U.S. POSTAL SERVICE,
MORGAN GENERAL MAIL FACILITY, New York, NY

*Docket No. 97-1966; Submitted on the Record;
Issued July 19, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On September 19, 1994 appellant, then a 49-year-old supervisor of mails, filed a claim for stress and emotional upset. In an accompanying statement, appellant indicated that on April 19, 1993 she was informed that she was an excess employee and was referred to a placement office where she took additional training and accepted short-term details in an effort to get a permanent assignment. Appellant indicated that on January 3, 1994 she received a temporary assignment with a specific tour and rest days. Appellant commented that since she reported for work she had been continuously harassed about tour and rest days. Appellant stated that on August 6, 1994 her supervisor scheduled her for weekend duties which she contended was in direct violation of her temporary assignment. She claimed that the harassment continued when she was denied bereavement leave for the death of her mother because she was scheduled to work that weekend and her supervisor wanted dates listed so appellant could be listed as absent without leave on those dates. The employing establishment responded that appellant's supervisor had the authority to change appellant's rest days.

In a December 19, 1994 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the evidence of record demonstrated that the claimed injury did not occur in the performance of duty. Appellant requested a hearing before an Office hearing representative which was held on May 24, 1995. In a December 14, 1995 decision, the Office hearing representative found that the work incidents cited by appellant did not arise within the performance of duty. She therefore affirmed the December 19, 1994 decision of the Office. Appellant requested reconsideration. In a March 10, 1997 merit decision, the Office denied appellant's request for modification of its prior decisions.

The Board finds that appellant did not establish that her emotional condition was causally related to compensable factors of employment.

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 within 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 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

Subsequent to the Office's December 19, 1994 decision, appellant submitted several items in support of her claim. In a May 1, 1995 decision by the New York State Unemployment Insurance Appeal Board, an administrative law judge indicated that appellant had worked for the employing establishment for 29 years and had been on the night tour for 27 of those years. The judge indicated that appellant had a partial mastectomy in August 1991 and at approximately the same time was diagnosed with a pituitary gland tumor and mitral valve prolapse. She indicated that appellant took medicine to forestall the reoccurrence of cancer. Appellant indicated that when she was excused from her position after working the night shift for 27 years, she had difficulty adjusting to the change with symptoms of sleeplessness, headaches, shaking, pounding of the heart, unstable temperature, weight loss, light headedness and hot and cold flashes. The judge indicated that it took appellant three to four months to adjust to the day shift. She received the weekend days off which allowed her to go to church which she considered to give her strength in her illness. On October 21, 1994 appellant was assigned to a night tour from 6:00 p.m. to 2:30 a.m. The judge stated that appellant was distraught over the possibility of the stress on her system in changing her routine and returning to the night shift, fearing the symptoms that arose when she changed from the night shift to the day shift. She also feared that the change would reactivate her brain tumor or her cancer. The employing establishment, after consideration of medical evidence, denied appellant's request for accommodation to remain on the day shift. Appellant did not return to work. The administrative law judge ruled that appellant did not leave her employment voluntarily.

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 374 (1986); *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).

In an August 24, 1994 report, Dr. Joan Einwohner, a psychologist, indicated that appellant was particularly upset one year previously when she was removed from her prior position. She related that appellant feared she would lose her job if she was assertive in pressing for scheduling that would accommodate her individual needs. Dr. Einwohner reported that appellant's anxiety subsided after she received a letter giving her weekends off until she was permanently assigned. She stated that a supervisor had recently refused to honor this letter and threatened appellant about the issue. Dr. Einwohner concluded that the circumstance of being removed from her position and never reassigned to a permanent assignment had exacerbated her emotional distress, which ran the risk of upsetting her hormonal balance, which in turn could reactivate her brain tumor or her cancer. She recommended that appellant should be accommodated. In an October 25, 1994 report, Dr. Einwohner stated that it was a well-known physiological fact that night schedules were more physically stressful than a daytime schedule. She reported that appellant no longer had the resiliency or stamina to cope with the strain of night duty nor the period of adjustment that was necessary before becoming adjusted to the night shift. Dr. Einwohner indicated that appellant was frightened to disrupt her bodily routines and its chemistry again for fear of reactivating her brain tumor or her malignancy. She noted appellant's regular schedule allowed her to work and indicated that because of fatigue buildup appellant needed two days off each week that were regularly scheduled at the same time. Dr. Einwohner stated that appellant was able to function smoothly and safely only when she was allowed to follow a set, unvarying schedule. She also indicated that appellant needed time to attend church services on Sunday which gave her moral support and helped her cope with her condition.

In a November 18, 1994 report, Dr. Nella Shapiro indicated that she had written previously requesting that appellant be placed on the day shift and have two consecutive days off, including Sundays. She stated that appellant was perfectly able to work on the day shift and had perfect attendance since 1993.

The evidence shows that appellant claims that her disability was due to a proposed change in work shift. The Board has held that a change in work shift may constitute a compensable factor of employment.⁴ However, in those cases, the claimant had actually undergone the change in work shift, which had caused medical conditions, which could be found compensable. In this case, appellant objected to the proposed change in shifts due to the potential effect the change would have on her recovery from cancer. Appellant did not actually return to work at the changed hours. Her reaction to the proposed change of work shifts was in essence a fear of future injury. The possibility of a future injury does not constitute an injury under the Act. Similarly, a physician's statement that exposure to employment factors would cause a recurrence of symptoms in the future is not a sufficient basis on which to establish a claim as the fear of a recurrence of a condition if a claimant returns to work does not constitute a basis for compensation.⁵ Appellant's fear of the change in a work shift therefore cannot be considered a compensable factor of employment. The emotional condition arising out of the

⁴ *Dodge Osborne*, 44 ECAB 849 (1993); *John J. Granieri*, 41 ECAB 916 (1990); *Charles J. Jenkins*, 40 ECAB 362 (1988).

⁵ *Dominic M. DeScala*, 37 ECAB 369 (1986).

proposed change in work shift, without ever actually experiencing the effects of the change in work shift schedule, arises out of a desire to work in a particular environment. As such, it cannot be considered an injury within the performance of duty.

The decision of the Office of Workers' Compensation Programs, dated March 10, 1997, is hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member