

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY J. FULTZ and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, Mich.

*Docket No. 97-2101; Submitted on the Record;
Issued July 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of his federal employment.

In the present case, appellant, a postmaster, filed a claim alleging that on June 5, 1996 he sustained stress, anxiety and depression as a result of his federal employment. In a supplemental statement, appellant explained that he had been employed as a supervisor of customer service in Ludington, when he was requested by the acting area post office operations manager, his own operations manager and his postmaster to relocate closer to his hometown and be the new Postmaster of Mayville. Appellant stated that he "accepted the position with honor," relocated back to his home town and "was established in the community of Mayville as the town's new Postmaster." Appellant stated that after eight months the position was awarded to another employee, causing him great embarrassment, humiliation and depression. The Office of Workers' Compensation Programs denied appellant's claim by decisions dated November 18, 1996 and March 14, 1997.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of his federal employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning

of the Federal Employee's Compensation Act. Nor is disability covered when it results from such factors as an employee's position.¹

An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to the Act.² Thus, if an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable.³ In the present case, appellant has acknowledged that he performed his job well. Appellant has explained that his employees were happy, his customers were happy and his revenues were up. He stated that the job he performed went "beyond the call of duty."

The core of appellant's claim is that he sustained an emotional condition when someone else was hired in his place as Postmaster of Mayville. The Board has held, however, that self-generated frustration arising from not being allowed to work in a particular position or to hold a particular job is not compensable under the Act.⁴

Rather than the work itself, appellant has attributed his emotional condition to alleged administrative actions and harassment by his superiors. Appellant has not, however, established the compensability of these allegations. Although administrative and personnel matters are generally related to the employment, they are functions of the employer and not duties of the employee.⁵ Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁶ The evidence of record establishes that shortly after appellant assumed his position in the Mayville Post Office, this post office was reclassified from a Level 15 to a Level 18 post office. Appellant's position as Postmaster was posted as a Level 18 position and some months later the Level 18 position was given to a Postmaster requesting a lateral transfer. While appellant may have felt humiliated when the Level 18 postmaster position was given to someone else, appellant has not established that the employing establishment erred or acted abusively in any manner in this reorganization of the Mayville Post Office, or in granting the postmaster position to someone else.

Appellant has also contended that his employment-related emotional condition actually began in February 1991. Appellant stated that at that time he was acting as a training supervisor and was informed by his superior that Mike Higgins, President of the Association of Letter Carriers, would be returning from sick leave and that appellant should request from him sick leave documentation and proof of a valid driver's license. Appellant alleged that when he

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

² *Clara T. Norga*, 46 ECAB 473 (1995).

³ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

⁴ *See Michael Thomas Pante*, 44 ECAB 510 (1993).

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ *Id.*

requested this documentation from Mr. Higgins, he told appellant “to go to hell, that he did n[o]t have to show a piss-on anything.” Appellant indicated that Mr. Higgins also filed grievances and harassment charges, which the Postal Inspection Service investigated and found “no threats of any kind.” Appellant contended that after serving his route for over 12 years, he was removed and his route was put up for bid because the “new District Manager was bending over backwards to keep the unions happy.” Appellant stated that from 1992 to April 1994 he was not allowed to supervise.

The Board has previously held that not every statement uttered in the workplace will give rise to coverage under the Act. Appellant’s perceptions of verbal abuse alone are not sufficient. Corroborating evidence must establish that the utterances in question occurred as alleged. In a similar case involving a verbal threat, the Board held that appellant must establish that an inappropriate remark was uttered and that it was a credible threat, not merely uttered jokingly or out of frustration.⁷ In the *Thomas* case, as in this case, the threat had been investigated by the employing establishment and it was determined that a threat was not communicated. Under such circumstances, a remark uttered in frustration does not constitute a compensable factor of employment.⁸ Appellant has further alleged that after this incident with Mr. Higgins, his route was opened for bid and he was not allowed to supervise again until 1994. As previously noted, self-generated frustration arising from not being allowed to work in a particular position or to hold a particular job is not compensable under the Act.⁹ Appellant has not submitted sufficient evidence to establish his allegation pertaining to Mr. Higgins.

Appellant has also alleged that he was harassed by Barb Jones and the audit team. Appellant stated that Ms. Jones, the Acting Post Office Manager questioned his productivity pace, information presentation regarding lobby hours and sexual harassment. Appellant also stated that an audit was conducted by two individuals, the person who had requested the lateral transfer and a postmaster from a very small office. 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.¹⁰ However, mere perceptions of harassment are not compensable.¹¹ Appellant’s allegations merely establish that Ms. Jones, the Acting Post Office Manager, asked appellant some questions upon touring his post office and that an audit was conducted of appellant’s post office. The record indicates that Ms. Jones was performing her duties as Acting Post Office Manager. While appellant may not have liked this review of his management style, he has not established that Ms. Jones harassed him.

As appellant has not established any compensable factors of employment in this case, it is not necessary to evaluate the medical evidence of record.

⁷ See *Leroy Thomas III*, 46 ECAB 946 (1995).

⁸ *Id.*

⁹ See *Michael Thomas Pante*, 44 ECAB 510 (1993).

¹⁰ *Supra*, note 4.

¹¹ *Mary A. Sisneros*, 46 ECAB 155 (1994).

The decisions of the Office of Workers' Compensation Programs dated March 14, 1997 and October 18, 1996 are hereby affirmed.

Dated, Washington, D.C.
July 7, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member