

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEFFERY GOMEZ and U.S. POSTAL SERVICE,  
SANTA ANA POST OFFICE, Santa Ana, Calif.

*Docket No. 97-2594; Submitted on the Record;  
Issued July 2, 1999*

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DECISION and ORDER

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

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

On April 14, 1995 appellant, then a 42-year-old mail processor, filed a claim for acute situational stress and depression. He contended that since his August 26, 1992 employment injury, he had undergone stress and depression due to mistreatment, maltreatment, incorrect diagnosis, false statements and falsification of paperwork leading to delays of medical treatment. He also stated that the Office of Workers' Compensation Programs had not responded to requests to authorize surgery for carpal tunnel syndrome.<sup>1</sup> In subsequent statements appellant cited other factors which he claimed caused his emotional condition. In a September 28, 1995 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained any condition which arose from the performance of his duties. Appellant requested a hearing before an Office hearing representative. In a July 28, 1997 decision, an Office hearing representative affirmed the Office's September 28, 1995 decision.

The Board finds that the case is not in posture for decision.

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

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<sup>1</sup> Appellant has filed separate claims for bilateral carpal tunnel syndrome and for a traumatic back injury.

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

Appellant made a general allegation that his emotional condition was due to harassment by his supervisors. 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 perceptions 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.<sup>5</sup> Appellant cited several incidents as the cause of his emotional condition. However appellant has not submitted sufficient evidence to establish that the employing establishment engaged in discrimination or harassment against him or that the actions taken by the employing establishment were intended to harass or discriminate against appellant. The employing establishment indicated that all of the Equal Employment Opportunity complaints filed by appellant had been either dismissed or settled. There are no statements from eyewitnesses who described specific incidents or patterns of discrimination or harassment of appellant. Appellant therefore has not established that actual discrimination or harassment caused his emotional condition.

Even though appellant has not established that discrimination or harassment occurred in his employment, the inquiry must also consider whether the incidents described by appellant constitute compensable factors of employment as defined under *Cutler* and *McEuen*. Appellant described several incidents as part of the cause of his emotional condition. He stated that when he first began work at the employing establishment, his postmaster wanted to terminate his employment on the next to last day of his probationary period. He filed a discrimination complaint but withdrew it and accepted mediation and was transferred to another position in which he had to undergo another probationary period before he was accepted as an employee. This incident relates to an administrative decision on whether to retain appellant in the

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 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).

<sup>4</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>5</sup> *Joan Juanita Greene*, 41 ECAB 760 (1990).

employing establishment. His reaction to this incident was a concern over job security which is not a factor of employment.

Appellant stated that he was eventually promoted to the position of temporary supervisor. When he was informed that his mother was dying, he requested leave to see her but his request was denied. Appellant then informed another supervisor of his situation and left to be with his mother. He requested a transfer to a employing establishment facility near where his mother lived but his request was denied and he was ordered to return to his former facility. His mother died the same week he was to return to work. Appellant made the funeral arrangements for his mother then returned to work. He indicated that he was counseled by his supervisors and demoted. This incident related to appellant's use of leave which is not a compensable factor of employment.<sup>6</sup> Also, appellant indicated that when his physician ordered him to stop working after January 13, 1995, he came to the employing establishment to deliver his physician's report on his ability to work. Appellant then sought his supervisor to seek his pay check stubs. He was confronted by another supervisor who demanded to know the diagnosis of appellant's condition. When appellant refused to tell him, the supervisor began shouting at appellant and ordered him off the work floor. A supervisor's shouting at an employee could be a compensable factor of employment.<sup>7</sup> However, appellant was on leave at the time of this incident and therefore was not performing his assigned duties during his regular work hours. This incident therefore cannot be considered to have occurred in the performance of duty.<sup>8</sup>

Appellant indicated that after his employment injuries to his back and his arms, his condition was misdiagnosed and mistreated and he was required to continue to work at light-duty positions which continued to cause pain to his back and arms, such as hand stamping mail and working as a watchman which required waving of his arms to direct traffic, sometimes holding a flashlight.<sup>9</sup> He contends that his job duties exceeded his physical limitations. The employing establishment was not requested to comment on appellant's allegations relating to the job assignment during this period in relation to the medical treatment he was receiving.<sup>10</sup> The case will therefore be remanded to the Office to obtain such a statement from the employing establishment, to be followed by a determination of whether these factors constitute compensable factors of employment. After further development as it may find necessary, the Office should issue a *de novo* decision.

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<sup>6</sup> *Ralph O. Webster*, 38 ECAB 521 (1987).

<sup>7</sup> *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

<sup>8</sup> *Mark C. Holst*, 39 ECAB 496 (1988).

<sup>9</sup> The employing establishment denied that appellant was required to hold anything in his hands while working as a watchman. Appellant, however, submitted statements from eyewitnesses who indicated that appellant used a flashlight on some occasions.

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.5 (April 1993).

The decision of the Office of Workers' Compensation Programs, dated July 28, 1997, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.  
July 2, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member