

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WEI VONGSAVANH and U.S. POSTAL SERVICE,
POST OFFICE, Burlingame, CA

*Docket No. 97-2782; Submitted on the Record;
Issued July 26, 1999*

DECISION and ORDER

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

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

The Board has duly reviewed the case record and concludes that appellant did not meet his burden of proof in this case.

On January 26, 1996 appellant, a 34-year-old letter carrier, filed a notice of occupational disease and claim for compensation alleging harassment by management over the loss of his uniform. By decision dated June 28, 1996, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established that his emotional condition was sustained in the performance of duty.

Appellant requested an oral hearing before an Office hearing representative which was held on April 15, 1997. By decision dated June 19, 1997, the Office hearing representative affirmed the denial of appellant's claim. The Office's June 28, 1996 decision, as well as the hearing representative's April 15, 1997 decision, set forth appellant's allegations in detail. The hearing representative found that appellant's allegations centered around his reaction to management's mandate that he wear uniform pants to work, his dissatisfaction with how management handled a break-in at his locker, and his belief that management was harassing him about not wearing uniform pants to work although they were aware that the pants had been stolen from the locker.

The Federal Employees' Compensation Act¹ does not cover every injury or illness that is somehow related to one's employment. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. The disability is not compensable, however, when it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted

¹ 5 U.S.C. § 8101.

to work in a particular environment or to hold a particular position.² Generally, an employee's emotional reaction to an administrative or personnel matter is not compensable. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.³

When working conditions are alleged as factors causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which of the working conditions are compensable factors of employment and may be considered by a physician when providing an opinion on causal relationship and which are not compensable and may not be so considered.⁴ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment and if the evidence of record establishes the truth of the matter alleged, only then should the Office evaluate the medical evidence to determine whether the evidence of record substantiates the matter alleged. When the matter alleged is a compensable factor of employment, the Office will then base its decision on an analysis of the medical evidence.⁵

The circumstances in this case concern the appellant's reaction to attempts by the employing establishment to enforce its policy requiring the wearing of a proper uniform, appellant's perception that the employing establishment did not properly investigate a break-in at his locker where his uniform pants were stolen, appellant's allegation that the employing establishment tried to make him pay for a replacement pair of uniform pants with his own money, and his contention that his supervisor harassed him by monitoring his work activities.

As a general rule, the exercise of supervisory discretion in an administrative capacity relates to the supervisor's performance of duties, not appellant's performance of duties and is therefore not compensable.⁶ Nonetheless, error or abuse by the employing establishment supervisor in an administrative or personnel matter, or evidence that the supervisor acted unreasonably in the administration of a personnel matter, may afford coverage.

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Norman A. Harris*, 42 ECAB 923 (1991).

⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ *Id.*

⁶ *Daryl R. Davis*, 45 ECAB 907 (1994).

In the instant case, the Office properly found that while appellant was displeased with the uniform policy and the investigation of the locker theft;⁷ he failed to submit any substantiating evidence to support a finding of error or abuse by the employing establishment. The Office also found no evidentiary support for appellant's allegation that the employing establishment tried to make him pay for a replacement pair of the uniform pants. The Boards notes that the employing establishment attempted to cooperate with appellant by allowing him to not wear uniform pants until he received a uniform allowance to purchase a new pair of pants.

Additionally, the Boards finds that appellant failed to establish error or abuse by his supervisor in the monitoring of his work. A mere inquiry by the supervisor as to whether appellant has enough work to perform does not constitute harassment. Thus, appellant's emotional reaction to the above-referenced administrative matters, absent a finding of error or abuse by the employing establishment, are not compensable under the Act.

The Board, therefore, concludes that appellant has failed to carry his burden to establish a compensable factor of employment pursuant to the Act.

As appellant has not established that he sustained an emotional condition in the performance of his federal employment, the Office properly denied his claim for benefits.

The decision of the Office of Workers' Compensation Programs dated April 15, 1997 is hereby affirmed.

Dated, Washington, D.C.

July 26, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Investigations are administrative functions of the employing establishment, that do not involve an employee's regularly or specially assigned duties and are not considered to be employment factors; *see Ruth S. Johnson*, 46 ECAB 237 (1994).