

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARLEY D. CROSBY and U.S. POSTAL SERVICE,
POST OFFICE, Summerville, S.C.

*Docket No. 98-392; Submitted on the Record;
Issued July 12, 1999*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition in the performance of duty on November 30, 1994.

In the present case, appellant filed a traumatic injury claim (Form CA-1) alleging that he sustained an emotional condition and chest pains in the performance of duty on November 30, 1994. In a narrative statement, appellant alleged that he had been required to participate in an investigative interview with two supervisors on that date; that a request to have a representative present was denied; that he was subjected to intensive questioning at the interview and, even after explaining to his supervisors that he was under a physician's care and was beginning to feel a tightness in his chest, he continued to be subject to further questioning; and that he was subject to "verbal assault" from his supervisors.

In a decision dated March 20, 1995, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established a compensable factor of employment as contributing to an injury. An Office hearing representative, by decision dated February 22, 1996, affirmed the denial of the claim. Appellant requested reconsideration, and by decision dated November 6, 1996, the Office denied modification of its prior decisions. There were two additional requests for reconsideration and by decisions dated March 12 and October 15, 1997, the Office determined that the reconsideration requests were not sufficient to require merit review of the claim.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty on November 30, 1994.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or

adversely affected by factors of his federal employment.¹ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵

Appellant has alleged that he sustained emotional stress and chest pains on November 30, 1994 while participating in an investigative interview with his supervisors. In a December 7, 1994 statement, the supervisors indicated that the interview was part of an investigation regarding appellant's prior actions, which could lead to disciplinary action. The investigation process is considered an administrative matter;⁶ it is considered a compensable factor of employment only to the extent that the evidence establishes error or abuse by the employing establishment. Appellant essentially alleges that there was error or abuse in that the interview was held in retaliation for appellant's testimony in an Equal Employment Opportunity Commission action of another employee, in conducting the meeting without his representative, in subjecting him to a verbal assault and in continuing the interview after appellant had complained of chest pains. With respect to these claims of error, the Board finds that the

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Anne L. Livermore*, *supra* note 4.

evidence of record is insufficient to establish error or abuse. The claim of retaliation is not supported by any evidence of record. In a November 21, 1994 memorandum, appellant's supervisor stated that the interview was to investigate possible disciplinary action based on his actions as a supervisor, not in retaliation for any prior testimony. This memorandum also indicates that the interview was originally scheduled for November 23, 1994, but would be postponed until November 30, 1994, in order for appellant to have time to obtain a representative. With respect to a verbal assault, the supervisors stated in the December 7, 1994 memorandum that appellant was generally unresponsive to the questions asked, but the interview was conducted in a professional manner with no displays of temper or raised voices. As to that allegation that the supervisors continued the investigation after appellant complained of chest pains, the supervisors stated that the interview ended at the first mention that appellant was feeling ill and in fact a supervisor took appellant to the hospital.

Although appellant has submitted additional evidence to the record, this evidence relates to other incidents between appellant and his supervisors that are not within the scope of this specific claim. Appellant filed a traumatic injury claim for an injury in the performance of duty on November 30, 1994. The only relevant factual evidence is evidence that would establish error or abuse in conducting the interview on that date. The record does not contain any probative evidence that the actions of the supervisors on November 30, 1994 were erroneous or abusive. Each allegation of error has been refuted by appellant's supervisors and no independent, probative and reliable evidence of error or abuse on November 30, 1994 has been presented.

The decisions of the Office of Workers' Compensation Programs dated October 15 and March 12, 1997 and November 6, 1996 are affirmed.

Dated, Washington, D.C.
July 12, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member