

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SIDNEY L. BAKER and U.S. POSTAL SERVICE,
POST OFFICE, Wickliffe, OH

*Docket No. 98-882; Submitted on the Record;
Issued July 27, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment.

On October 16, 1997 appellant, a window clerk, filed a claim alleging that he sustained mental stress causally related to his federal employment. Appellant stated on his claim form that he had been subject to harassment by his supervisor on a regular basis. In a narrative statement, appellant alleged the following incidents as contributing to his emotional stress: (1) he had worked as a dispatcher, which was outside his duties as a window clerk; (2) he had worked off the clock without pay; (3) his supervisor refused to show him his service record; (4) his supervisor did not allow him to hand in a physician's statement; (5) he worked six hours without lunch; (6) his supervisor reported appellant's age to another employee; and (7) his supervisor talked to someone at the Veterans Affairs Hospital about appellant. Appellant's supervisor responded to the allegations and asserted the following: dispatching is part of the duties of a window clerk; appellant was not asked to work off the clock; appellant was advised that he could view his personnel records after work, as were other employees; the statement from appellant's physician did not state that he was unable to perform his duties, and therefore was unacceptable; employee's may work six hours without lunch; appellant's age was not reported to any other employees; and appellant had requested that the supervisor speak with his physician, and the supervisor explained to the physician the deficiencies in the report submitted.

In a decision dated November 3, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that the evidence failed to establish an injury in the performance of duty.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty.

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

In the present case, appellant has alleged incidents relating to administrative actions taken by his supervisor. Although the handling of such personnel matters is generally related to employment, it is an administrative function of the employer, not a duty of the employee.⁴ An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.⁵ Although appellant has alleged error by his supervisor, he has not submitted any probative evidence establishing error or abuse in this case. The supervisor responded to each of appellant's allegations and her statement refutes any allegation of error or abuse. There is no independent evidence that would establish error or abuse in an administrative action in this case. With respect to a general allegation of harassment, there is no evidence supporting a finding of harassment in this case.⁶ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁷

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).

⁵ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

⁶ A claimant must establish a factual basis for a claim of harassment by supporting the allegations with probative and reliable evidence *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁷ *Helen P. Allen*, 47 ECAB 141 (1995).

Accordingly, the Board finds that appellant has not substantiated a compensable factor of employment in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁸

The decision of the Office of Workers' Compensation Programs dated November 3, 1997 is affirmed.

Dated, Washington, D.C.
July 27, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).