

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY J. DOWNING and U.S. POSTAL SERVICE,
MONTGOMERY P & D CENTER, Montgomery, Ala.

*Docket No. 97-1331; Submitted on the Record;
Issued March 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met her burden.

The facts in this case indicate that on October 6, 1995 appellant, then a 43-year-old leave control clerk, filed a claim for compensation, alleging that an employment incident on September 26, 1995 caused an emotional condition.¹ By decision dated March 26, 1996, the Office denied the claim, finding that the evidence of record failed to establish that the claimed injury occurred in the performance of duty. Appellant requested reconsideration and, by decision dated November 26, 1996, the Office denied modification of the prior decision. The instant appeal follows.

In support of her claim, appellant submitted a statement alleging that she was overcome with extreme rage on September 26, 1995 after she was lied to by a supervisor regarding an employee's discipline for absenteeism and, after complaining to another supervisor, received a "so what" attitude, and then was told that a new discipline policy was to be instituted in the flat sorter area of the employing establishment. In a second statement she noted that her job duties included reporting attendance to the supervisors who were to then discipline the employees and

¹ The Board notes that the instant claim was adjudicated by the Office of Workers Compensation Programs under file number A06063669. Appellant has two additional claims, A060593424 for a cervical sprain and A060508571 for an emotional condition that was accepted by the Office on December 24, 1991 for major depression. Under the latter claim number, on July 17, 1996 appellant filed a Form CA-2a, stating that she sustained a recurrence of disability on September 27, 1995. By letter dated September 12, 1996, the Office informed appellant that the proper course of action was to file a new claim, as she had done in filing the instant claim, since her claim for recurrence described many things that happened after she returned to modified work in 1992 and were, therefore, new exposures.

discussed the lack of cooperation she received in this regard. She emphasized that attendance was horrible and that her requests for discipline were routinely ignored. She stated that she tried to make a difference but that no one cared.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴ The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position or secure a promotion. Disabling conditions resulting from an employee's feelings of job insecurity, or the desire for a different job do not constitute personal injury sustained in the performance of duty within the meaning of the Act. In these cases, such feelings are considered to be self-generated by the employee as they arise in situations not related to assigned duties.⁵ While, as a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act,⁶ error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonable in the administration of a personnel matter, may afford coverage.⁷ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸

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

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Donald E. Ewals*, 45 ECAB 111 (1993).

⁶ *See Norman A. Harris*, 42 ECAB 923 (1991).

⁷ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

In the present case, appellant has alleged that she sustained an emotional condition due to a conflict between her beliefs and the policies and procedures of the employing establishment, namely her frustration with her supervisor's decisions not to pursue discipline of employees for absenteeism. The Board, however, finds that appellant's emotional reaction arising from these procedures or policies results from her frustration within action taken by the upline supervisors rather than any inability to perform her regular work duties. As appellant has failed to establish any administrative error in these matters, she has not established a compensable employment factor and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.⁹

The decisions of the Office of Workers' Compensation Programs dated November 26 and March 26, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 26, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁹ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).