

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE A. GRIFFIN and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, N.C.

*Docket No. 97-1495; Submitted on the Record;
Issued March 9, 1999*

DECISION and ORDER

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

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for hearing.

In the present case, on August 14, 1996 appellant, a distribution clerk, filed a claimed alleging that she had sustained an emotional condition in the performance of her federal employment. In support of her claim appellant submitted a twenty-three page typed statement of occurrence beginning October 20, 1995. Essentially appellant alleged that she felt harassed at work due to denial of leave without pay, a transfer to a minishift, and rescission of a bid assignment. The Office denied appellant's claim by decision dated November 26, 1996 on the grounds that the evidence of record failed to establish that the alleged activities or employment factors occurred in the performance of duty. On December 30, 1996 appellant postmarked a letter dated December 26, 1996 wherein appellant requested a hearing before an Office hearing representative. The Office denied appellant's request for hearing on February 4, 1997.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity per se is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employee's Compensation Act. Nor is disability covered when it results from

such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.¹

In cases involving emotional conditions, the Board has held that, when work conditions are alleged as factors in causing a condition or disability, the Office must first as part of its adjudicatory function make findings of fact regarding which working conditions are deemed compensable factors of employment and which working conditions are not deemed factors of employment. Only if appellant has alleged a compensable factor of employment will the Office further review the medical evidence and evaluate the claim.²

Appellant has in general terms alleged that she was harassed by her supervisor since December 17, 1995, due to her supervisor's sarcastic remarks to her and administrative actions. For harassment or retaliation to give rise to a compensable disability under the Act, there must be evidence that harassment or retaliation did in fact occur. Mere perceptions of harassment or retaliation are not compensable under the Act.³ In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted any evidence corroborating that she was harassed or retaliated against. As the record does not establish that harassment or retaliation actually occurred, appellant has failed to establish that harassment or retaliation is a compensable factor of employment in this case.

Regarding appellant's allegation that she was required to work a minidetail she did not like because it complicated her home life and that her bid assignment was taken away, the Board has previously held that denials by an employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.³ In this regard, appellant has not established a compensable factor of employment under the Act.

Regarding appellant's allegations of denial of leave, the Board finds that this allegation relates to an administrative/ personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within coverage of the Act.⁴ Although the handling of leave requests are generally related to the employment, they are administrative functions of the employer, and not duties of the employee. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁵ Although appellant has alleged that she received unfair denials of leave, appellant has not provided the necessary independent, corroborating evidence that the employing establishment erred or acted abusively in denying appellant's requests for leave.

¹ See *Elizabeth Pinero*, 46 ECAB 123 (1994).

² *Martha L. Watson*, 46 ECAB 407 (1995).

³ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁴ *Joseph C. DeDonato*, 39 ECAB 1260 (1988).

⁵ *Kathleen D. Walker*, 42 ECAB 603 (1991).

For the foregoing reasons, as appellant has not alleged any compensable factors of employment, appellant has not met her burden to establish that she sustained an emotional condition in the performance of duty.

The Board also finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative.***"

As appellant did not request a hearing within 30 days of the decision, she is not entitled to a hearing as a matter of right. The Office, however, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁶ The Office in denying appellant's request for hearing did exercise its discretion and denied appellant's request on the grounds that the case could be considered further upon the submission of new medical evidence to the Office with a request for reconsideration. The Office did not abuse its discretion in this matter.

The decisions of the Office of Workers' Compensation Programs dated February 4, 1997 and November 26, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 9, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Rebel L. Cantrell*, 44 ECAB 660 (1993).