

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH W. HENRY and U.S. POSTAL SERVICE,
POST OFFICE, Marietta, GA

*Docket No. 98-939; Submitted on the Record;
Issued November 8, 1999*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition while in the performance of duty

On February 23, 1996 appellant, then a 49-year-old letter carrier, filed an occupational disease claim, alleging that beginning February 9, 1996 he developed work-related stress that was causally related to factors of his federal employment. In a supplemental statement, appellant identified incidents which occurred between January 25 and February 21, 1996 which he believed were causative factors of his stress. These incidents include the following: repeated route proficiency checks by his supervisor, Edwin R. Jenkins, criticism of his work concerning casing mail and route management by Mr. Jenkins, chastisement of appellant for requesting help on his route when it was not necessary, the requirement that appellant work double overtime when he was not on the overtime requested list, ordering appellant to attend a meeting with Mr. Jenkins without the aid of union representation, requiring appellant to provide documentation for requested sick leave on February 10, 1996, Mr. Jenkins referring to him as "JoeBoy" and his inability to talk with a union steward via telephone when he called on February 20, 1996.

In a decision dated August 5, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish that his claimed condition was causally related to factors of his federal employment. By decision dated December 30, 1997 and finalized January 2, 1998, an Office hearing representative affirmed the Office's decision on the grounds that appellant had not identified any compensable factors of employment and therefore had not established fact of injury.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that he sustained an emotional condition within the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to his condition.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from factors such as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

In the present case, appellant has not established any causative factors that are compensable under the Act. Appellant initially contends that his supervisor, Mr. Jenkins, subjected him to an undue number of route proficiency checks and, before performing a repeat proficiency check, advised him that he if missed any of the points he had missed on the prior check, he would be written up. Appellant also contends that Mr. Jenkins improperly chastised him concerning casing mail. These are an administrative matter and/or disciplinary matters. As appellant has not established that the employing establishment erred or acted abusively in relation to the administration of the route checks or the critique of appellant's work performance, these are not compensable factors under the Act. Appellant also asserts that he was unable to contact his union steward while on leave. However, this did not pertain to his regular or specially assigned duties and therefore any reaction related to this is not within the performance of duty.

Appellant also contends that he was harassed by Mr. Jenkins by being called "JoeBoy," being required to document sick leave requested in February 1996 and not being allowed to contact a union steward when requested and being assigned double overtime. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.⁴ Mere perceptions or feelings of

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

harassment, however, are not compensable. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations of harassment with probative and reliable evidence.⁵ Appellant failed to provide any such probative and reliable evidence in the instant case. Appellant has not submitted any evidence to substantiate any of his allegations. Although Mr. Jenkins acknowledged that he called appellant “JoeBoy,” he indicated that this had been his nickname for appellant for years. Appellant has not provided any evidence to suggest that Mr. Jenkins used this name in a derogatory or harassing fashion, he has not substantiated a compensable factor under the Act. Appellant’s contention that he was forced to work double overtime is not supported by any evidence in the record and lacks specificity. Finally, appellant’s contention that he was not permitted to contact a union steward when he wished and did not have union representation with him while meeting with Mr. Jenkins is an administrative or personnel matter. As appellant has not established that Mr. Jenkins erred or acted abusively in this regard, his reaction is deemed to be self-generated. Although appellant presented evidence of filing an Equal Employment Opportunity complaint and a grievance, that complaint and the grievance had not been resolved at the time of his hearing. Thus, there is no probative or reliable evidence to substantiate appellant’s allegations of harassment.

The decision of the Office of Workers’ Compensation Programs dated January 2, 1998 is hereby affirmed.

Dated, Washington, D.C.
November 8, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).