

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA J. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 98-1668; Submitted on the Record;
Issued November 24, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On April 10, 1997 appellant, then a 45-year-old automation clerk, filed a notice of traumatic injury and claim, alleging that she sustained an anxiety attack while in the performance of duty on April 8, 1997. Appellant alleged that Ash Thakkar, a manager, called her aside and warned her about her job performance. In a supplemental statement, appellant indicated that Mr. Thakkar had noted her talking on the job, said she was a food worker, but gave her a warning about not working. In a decision dated May 1, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the claimed injury did not occur within the performance of duty. By decision dated March 20, 1998, an Office hearing representative affirmed the May 1, 1997 decision of the Office.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that she 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 her 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 her 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 her 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 alleged she sustained an anxiety attack as a result of a conversation between herself and Mr. Thakkar in which she indicated that he had warned her about her job performance. However, Mr. Thakkar reported that he spoke with appellant and expressed concern because he had observed her not working on two occasions that day. He indicated that he was concerned because appellant was normally a good worker. Appellant told him she had just turned around that moment and he responded “no problem.” Although appellant submitted several witness statements, none of her coworkers overheard her conversation with Mr. Thakkar and, therefore, she has insufficient evidence to corroborate her assertion that Mr. Thakkar was abusive in his comments to her. In any case, appellant’s complaints concern an administrative matter in which Mr. Thakkar performed his duties as a supervisor and the manner in which he exercised his supervisory discretion. As noted above, the evidence is insufficient to establish error or abuse in this administrative matter. As appellant has not established a compensable factor of employment under the Act, she is not established that she sustained an emotional condition within the performance of duty.

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).

The decisions of the Office of Workers' Compensation Programs dated March 20, 1998 and May 1, 1997 are affirmed.

Dated, Washington, D.C.
November 24, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member