

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENJAMIN W. DONALDSON and U.S. POSATL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 98-906; Submitted on the Record;
Issued October 5, 1999*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition causally related to factors of his federal employment.

On May 16, 1995 appellant, then a 58-year-old letter carrier, filed an occupational disease claim, alleging that he sustained aggravation of job stress that was causally related to continuing harassment and fear of supervisory retaliation, which began January 10, 1995 and which he realized was causally related to his employment on January 25, 1995. Appellant stopped work on April 14, 1995. In a supplemental statement, appellant listed the following incidents as causative factors of his claimed emotional condition: his work problems began in approximately 1979 when the employing establishment refused to promote him from a position as a mailhandler to a position as a sack sorter; in 1980, the employing establishment denied him a promotion as a truck driver; in 1986 he was denied a promotion as a carpenter and the position was given to a Black man with little carpentry experience; he was threatened by a supervisor, Maude Saulsberry and when he was moved to another station, he was threatened by another supervisor, R.C. McGraw; he was unjustly accused of delaying the mail in March 1986, he was placed on a route where mail had been delayed for three days; he was issued a questionable letter of warning in 1986; he was subjected to verbal threats, false accusations and letters of warning by Grailen L. Johnson, who he alleged was Silvester Owens' nephew, Raymond Meyers, Mr. Turner and Sidney Poole; he was harassed by Cecelia Wilson, allegedly Mr. Owens' daughter-in-law; Mr. Owens violated past grievances by requesting that Ms. Waddell subject him to unjustified street observations, he was improperly issued letters of warning dated January 19 and 23, 1995, he was improperly charged with leave without pay when he had sick and annual leave available; and he was improperly charged with leave without pay when he failed to return to work on April 13, 1995 on advice of his personal physician after a fitness-for-duty examination qualified him for work.

In a decision dated June 19, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record did not establish that he

sustained an injury within the performance of duty. By decision dated November 7, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish that modification of the prior decision was warranted.

The Board has duly reviewed the entire case record on appeal and finds that appellant did not establish that he sustained an emotional condition while in the performance of duty.¹

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.² 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.³ 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.⁴

In the present case, appellant has not substantiated any compensable factors of employment under the Act. Initially appellant contends that he was denied three promotions between 1979 and 1981. However, appellant's desire to hold a particular position and denial of the same is not a compensable factor under the Act.⁵ Appellant has also alleged several incidents which he asserts constituted harassment or discrimination. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on January 28, 1998, the only decision before the Board is the Office's November 7, 1997 decision. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ See *Buck Green*, *supra* note 3.

factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.⁶ Mere perceptions or feelings of 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.⁷ Appellant failed to provide any such probative and reliable evidence in the instant case. Appellant alleged that several Black supervisors subjected him to discrimination due to his race and made false allegations, verbal threats or gave him letters warning. All of the named supervisors responded to appellant's claim by denying any threatening conduct, verbal threat, false accusations or unjustified supervisory conduct. In addition, Mr. Johnson, Ms. Wilson and Mr. Owens denied any familial relationship. As appellant has not substantiated his allegation of harassment with specificity or corroborative evidence, his contention that he was subjected to false accusations and verbal threats is not supported by probative or reliable evidence and is not compensable. With respect to the January 19 and 23, 1995 letters of warning, appellant submitted copies of the letters and prearbitration agreements dated September 13 and October 25, 1995, in which the employing establishment agreed to withdraw the January 19, 1995 letter effective September 22, 1995 and to withdraw the January 23, 1995 letter effective October 5, 1995. The agreements were mutual and indicated that "settlement [was] reached on a non-precedent basis; does not constitute a waiver of either party's position on similar cases and [was] not to be cited or referenced by either party in future cases which may arise." The letters of warning are disciplinary actions taken by the employing establishment in response to administrative matters concerning appellant's conduct. As the settlement agreements do not establish that the employing establishment erred or acted abusively, appellant's reaction to these letters is not compensable.⁸ Similarly, appellant has not established that the employing establishment erred or acted abusively in charging him with leave without pay when he was out of work in January 1995 and failed to return to work in April 1995. Consequently, appellant reaction to this administrative matter is deemed to be self-generated. The mere fact that the employing establishment lessens or reduces a disciplinary action or sanction as it did in this case, by eventually withdrawing said letters, does not establish that the employer acted in an abusive manner toward the employee.⁹ In addition, appellant's dissatisfaction with Mr. Owens' management style with respect to street observations is not within the performance of duty. Appellant's complaints concerning the manner, in which his supervisor performed his duties as a supervisor or the manner, in which he exercised his supervisory discretion fall, as a rule, outside of compensable factors of employment.¹⁰ His complaints are analogous to frustration over not being allowed to work in a particular job environment and are, therefore, not compensable. Finally, in support of his allegation of harassment appellant submitted documents relating to seven Equal Employment Opportunity complaints he filed between November 1991 and July 1992. However, none of these complaints were resolved in appellant's favor and many were cancelled due to appellant's refusal to sign proposed settlement agreements which would have

⁶ See *Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *Joe E. Hendricks*, 43. ECAB 850 (1992).

⁹ *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁰ *Donald E. Ewals*, 45 ECAB 111 (1993); see also *David W. Shirey*, 42 ECAB 783 (1991).

provided full relief. Thus, this evidence does substantiate appellant's contention that he was harassed by the Black supervisors. As appellant has not identified any compensable factors of employment, he has not established that he sustained an emotional condition while in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated November 7, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 5, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member