

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of COLETTE A. POWERS and U.S. POSTAL SERVICE,
POST OFFICE, Fullerton, CA

*Docket No. 97-985; Submitted on the Record;
Issued September 24, 1999*

DECISION and ORDER

Before DAVID S. GERSON, 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 May 31, 1995.

On June 4, 1995 appellant, then a 29-year-old mail carrier, filed a notice of traumatic injury and claim, alleging that she sustained stress as a result of incidents which occurred on May 31, 1995 while she was within the performance of duty. Appellant stopped work on that date. The record reflects that appellant requested overtime on May 31, 1995 which was denied by her supervisor, Carol Preimesberger; after she advised her supervisor about additional work that needed to be completed before she could go on her route, Ms. Preimesberger told her to do it after she returned. Ms. Preimesberger thereafter stood behind appellant and watched her pulling down mail; she also followed appellant outside to watch her when she loaded her truck with "pennysavers." Appellant requested a meeting with Dave Chamberland, a union steward; however, Ms. Preimesberger told appellant he was unavailable. Ms. Preimesberger advised appellant that she was not pulling her mail down and sorting it in a proper fashion. Thereafter appellant became upset and started to go towards the bathroom, stating that she could not take it anymore and kicked two mail tubs. Appellant advised her supervisor that she was feeling "stressed" and wished to go. Ms. Preimesberger advised her that she would be on leave without pay (LWOP). Appellant submitted statements from coworkers with her claim which addressed the incidents alleged by appellant. Ms. Preimesberger provided a statement in which she also addressed the alleged incidents, but explained that she was observing appellant following the request for overtime to determine why appellant required overtime to finish her work. She stated that she had "treated appellant with dignity and respect" throughout the time period in question and that it was her job to see that each carrier was working to their full potential. She questioned the motivation of the coworkers who supplied witness statements.

In a decision dated January 12, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that none of the identified causative factors was compensable under the Federal Employees' Compensation Act as the incidents involved

administrative or personnel matters in which error and abuse was not established. In a decision dated October 28, 1996, an Office hearing representative affirmed the Office January 12, 1996 decision.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not met her burden of proof in establishing that she sustained an emotional condition while in the performance of duty on May 31, 1995.

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 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, the Office found that the events of May 31, 1995 occurred, but did not constitute compensable factors of employment. The Office properly found that the denial of appellant's request for overtime was not compensable as the administration of leave usage and overtime approval is an administrative matter and appellant has not submitted evidence sufficient to establish that Ms. Preimesberger erred or was abusive in denying said overtime.⁴

The Boards finds that the actions of Ms. Preimesberger on May 31, 1995 concerning the observation of appellant's manner in performing her duties, her statement concerning LWOP and in monitoring appellant at the workplace fall within the purview of personnel or administrative

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 *Id.*

matters and are not compensable under the Act unless there is evidence of error or abuse. Appellant has alleged abuse in the instant case and contends that Ms. Preimesberger's actions in following her around, commenting on her work and advising her that if she left she would be charged with LWOP constitute harassment. 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.⁵ Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.⁶ Appellant has not met her burden of proof in this case. The Board finds that the evidence of record fails to establish error or abuse on the part of appellant's supervisor. A supervisor may properly monitor and advise employees while performing his or her supervisory duties. Appellant's complaints concerning the manner in which her supervisor performed her duties or the manner in which she exercised her supervisory discretion fall, as a rule, outside of compensable factors of employment.⁷ Her complaints are analogous to frustration over not being allowed to work in a particular job environment and are therefore not compensable. Consequently, appellant has not established any compensable factors of employment in relation to her emotional condition claim and therefore has not met her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated October 28 and January 12, 1996 are hereby affirmed.

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

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Donald E. Ewals*, 45 ECAB 111 (1993); see also *David W. Shirey*, 42 ECAB 783 (1991).