

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ODELL HAMILTON and U.S. POSTAL SERVICE,
MAIL TRANSPORT EQUIPMENT CENTER, Richmond, CA

*Docket No. 98-1199; Submitted on the Record;
Issued September 13, 1999*

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On June 19, 1997 appellant, then a 47-year-old administrative assistant, filed an occupational disease claim alleging that he developed emotional stress which he attributed to his federal employment. By decision dated January 16, 1998, the Office denied appellant's claim on the grounds that appellant did not allege any compensable factors of employment and, therefore, the evidence did not establish that he sustained an injury in the performance of duty.

The Board has duly reviewed the case record and finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Federal Employees' Compensation Act¹ does not cover every injury or illness that is somehow related to one's employment. When the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. The disability is not compensable, however, when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. For example, if an employee is unhappy doing inside work, desires a different job, broods over the employing establishment's failure to give him the kind of work he desires, and he becomes emotionally disturbed as a result, this does not establish "a personal injury sustained while in the performance of his duty" within the meaning of the Act.²

¹ 5 U.S.C. §§ 8101-8193.

² *Lillian Cutler*, 28 ECAB 125, 131 (1976); 5 U.S.C. § 8102(a).

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

Appellant attributed his emotional condition to what he characterized as a “snowball of harassment” directed at him by his supervisor, Winston Butler, who began supervising appellant in the summer of 1995. Appellant explained that Mr. Butler’s harassment began when appellant requested an exemption from a particular overtime assignment which conflicted with his long-standing family plans. In support of his allegation, appellant points to two letters of warning he received for unsatisfactory performance. Appellant alleged that he had performed his duties for 13 years and had always received positive merit evaluations, ranging from good to very good, and had never had similar problems with any of his prior supervisors. It is well established that matters involving disciplinary actions are administrative functions of the employer rather than duties of the employee.⁵ Where the evidence demonstrates that the employing establishment has neither erred nor acted abusively in the administration of personnel matters, coverage will not be afforded.⁶ In a letter dated June 27, 1997, Mr. Butler, appellant’s supervisor, stated that appellant had received the two letters of warning because he was not performing his assigned duties adequately, having made several errors on an inventory report, having failed to properly complete a notification of absence form, and having failed to properly convey messages regarding employees to the supervisor. Appellant has not submitted any probative evidence establishing error or abuse by the employing establishment in issuing the letters of warning, and thus has not established a compensable factor of employment.

Appellant further related that his supervisor denied his requests for overtime, denied his requests for sick leave, required him to punch a time clock, which he was not previously required to do, practiced favoritism by selecting an acting supervisor whom he personally liked and granted other employees undeserved leniency. To the extent appellant’s allegations address disputes over the use of leave, overtime requests, the requirement that appellant punch the time clock, and the selection of acting supervisors, these are administrative functions of the employing establishment and as such are not compensable unless appellant shows the employing establishment abused its discretion or acted unreasonable.⁷ In this case, the employing

³ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *Id.*

⁵ *Barbara J. Nicholson*, 43 ECAB 803 (1994); *Diane C. Bernard*, 45 ECAB 223 (1993).

⁶ See *Sharon R. Bowman*, 45 ECAB 187, 194 (1993).

⁷ See *Daryl R. Davis*, 45 ECAB 907, 911 (1994); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas*

establishment has submitted a statement explaining these administrative actions, and appellant has not submitted sufficient evidence which indicates that the employing establishment erred or acted abusively in the handling of these matters.

Similarly, regarding appellant's allegation of harassment and favoritism by Mr. Butler, for harassment to give rise to a compensable disability under the Act, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ Mere perceptions of harassment or discrimination are not compensable under the Act⁹ and an employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.¹⁰ In the present case, appellant has not submitted evidence corroborating his various allegations of harassment by Mr. Butler. A claim based on harassment by a supervisor must be supported by the record,¹¹ and a claimant's burden of proof is not discharged by the fact that the employee has identified some employment factors. While appellant has submitted several narrative statements from his coworkers, who also voice grievances against Mr. Butler, these statements do not identify or address any specific incidents alleged by appellant. Therefore, in the absence of substantiating evidence, appellant did not establish that harassment or favoritism occurred.¹² As appellant has not established any compensable factor of employment, the Office properly rejected his claim for compensation.¹³

Plante, 44 ECAB 510, 516 (1993); *Barbara J. Nicholson*, *supra* note 5; *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁸ *Barbara J. Nicholson*, *supra* note 5.

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹⁰ *William P. George*, 43 ECAB 1159 (1992).

¹¹ *See Diane C. Bernard*, *supra* note 5.

¹² *See Raul Campbell*, 45 ECAB 869 (1994).

¹³ As appellant has not established any compensable factors of employment, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 3.

The decision of the Office of Workers' Compensation Programs dated January 16, 1998 is hereby affirmed.

Dated, Washington, D.C.
September 13, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member