

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNEST ST. PIERRE and U.S. POSTAL SERVICE,
POST OFFICE, Williamstown, MA

*Docket No. 99-467; Submitted on the Record;
Issued August 14, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

On August 27, 1997 appellant, then a 45-year-old clerk, filed a claim for anxiety, depression, panic attacks and fatigue. In an 18-page letter statement accompanying his claim, he described incidents and conditions of his employment to which he attributed these conditions. After eliciting further information and advising appellant of the medical evidence needed to establish his claim, the Office of Workers' Compensation Programs, by decision dated March 31, 1998, found that appellant had not established that he was injured in the performance of duty. Appellant requested a review of the written record and an Office hearing representative, by decision dated September 30, 1998, found that appellant had not substantiated any compensable factors of employment and that the medical evidence was insufficient to establish his claim.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors 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.¹

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

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

Many of appellant's allegations relate to administrative or personnel matters by the employing establishment, which generally are not covered under the Act in the absence of error or abuse by the employing establishment.² He has not shown such error or abuse in the irregularity of his lunch breaks or his days off while he was employed as a part-time flexible clerk; appellant's postmaster reported that such employees have no set schedules. Appellant has shown no error or abuse in the employing establishment's discussions with him about his sick leave usage,³ about restricting his daily telephone calls about his father's health to break or lunch periods, or about his conversation with another employee during working hours, which appellant stated was brief.

Appellant also attributed his condition to investigations done by the employing establishment: one in which he was asked how many guns he owned and one in which he was asked what he knew about a liquor bottle found in the trash in an area where he took smoking breaks. As an investigation is generally related to the performance of an administrative function of the employer and not to the employee's regular or specially assigned work duties, it is not a compensable factor of employment unless there is affirmative evidence that the employer erred or acted abusively in the administration of the matter.⁴ The case record contains no such showing of error or abuse in the employing establishment's investigations of these two matters.

Appellant's contention that he was not given training does not provide any details of what training was sought or denied. Even if training were denied, error or abuse would have to be shown with regard to the denial, and there is no evidence of such. When appellant later was assigned to training for three weeks, he complained that he was unable to undergo training. That appellant was not considered for a promotion he desired is not a compensable factor of employment under the Act.⁵ Appellant has not substantiated that the hours and days off of a posted job was changed when management discovered his interest in the position, but even if he had, this concerns a desire for a different job, which is not compensable as it does not involve his ability to perform his duties.⁶

Appellant also cited his objection to work assignments made by the employing establishment. Assignment of work is an administrative or personnel matter of the employing establishment and coverage can only be afforded where there is a showing of error or abuse.⁷ Appellant contends that his assignment as a window clerk following his psychiatric hospitalization in 1981 violated his doctor's orders. This contention, if proven, could be compensable.⁸ However, the case record contains the discharge summary and other reports from

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

³ *Jimmy Gilbreath*, 44 ECAB 555 (1993).

⁴ *Larry J. Thomas*, 44 ECAB 291 (1992).

⁵ *Donald W. Bottles*, 40 ECAB 349 (1988).

⁶ *Donna J. DiBernardo*, 47 ECAB 700 (1996).

⁷ *Alice M. Washington*, 46 ECAB 382 (1994).

⁸ *Carolyn R. Banks*, 47 ECAB 449 (1996).

appellant's hospitalization from February 2 to March 4, 1981 and neither these reports nor any other medical evidence indicates appellant could not perform the duties of a window clerk. Appellant's complaint that his rehabilitation assignments in 1996 were boring or undesirable constitutes frustration from not being permitted to hold a particular position and is not compensable under the Act.⁹ His complaints about the space in which he was required to work on this rehabilitation assignment -- in a small supply room or at his supervisor's desk -- amounts to frustration at not being permitted to work in a particular environment and is not compensable.¹⁰ Appellant's contention that he suffered his first panic attack in August 1979 while working at the window as a clerk does not cite a factor of employment as being responsible for this attack but rather only identifies where the panic attack occurred.

Appellant has cited a compensable factor of employment: the pressure of attempting to fulfill his job requirements shortly after he was hired in January 1977. He stated that he was assigned to deliver mail his first day but was not familiar with the area, that learning the delivery schemes was difficult, and that he had to run to complete some of the assigned routes on time. Appellant also contended that the truck he used to deliver mail had broken chains and a door that did not latch. The employing establishment did not dispute these contentions, which relate to the performance of appellant's assigned duties and therefore can be compensable.¹¹

Although appellant has established an employment factor which may give rise to a compensable disability under the Act, this is not sufficient to discharge his burden of proof. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional condition that is causally related to the accepted compensable employment factors.¹² None of the medical evidence attributes appellant's emotional condition to his attempts to perform his duties. In a report dated May 28, 1998, one of appellant's attending physicians, Dr. Anthony Smeglin, a Board-certified internist, stated that appellant's work environment was "the main and current, continuing cause of his psychologic decompensation." Neither this report nor any of Dr. Smeglin's other reports attribute appellant's emotional condition to a compensable factor of employment. The reports of Dr. Felix Sommer, the Board-certified psychiatrist under whose care appellant was hospitalized in early 1981, do not contain any indication that appellant's conditions of depression, generalized anxiety disorder and chronic anxiety state were causally related to appellant's employment. The reports of a social worker do not constitute competent medical evidence, as a social worker is not a "physician" as defined by section 8101(2) of the Act.¹³ Dr. Smeglin's endorsement of the assessments of this practitioner's reports lends little support to appellant's claim, as it is not at all clear what Dr. Smeglin is endorsing. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition

⁹ *Purvis Nettles*, 44 ECAB 623 (1993).

¹⁰ *Ralph O. Webster*, 38 ECAB 521 (1987).

¹¹ *Ezra D. Long*, 46 ECAB 791 (1995); *Anne L. Livermore*, 46 ECAB 425 (1995).

¹² *William P. George*, 43 ECAB 1159 (1992).

¹³ 5 U.S.C. § 8101(2).

was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.¹⁴ Appellant has not met his burden of proving that he sustained an emotional condition in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated September 30 and March 31, 1998 are affirmed.

Dated, Washington, D.C.
August 14, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁴ *Bruce E. Martin*, 35 ECAB 1090 (1984).