

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WALTER H. DENTON and U.S. POSTAL SERVICE,  
POST OFFICE, Johnson City, NY

*Docket No. 99-2523; Submitted on the Record;  
Issued December 14, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment.

Appellant filed a claim on September 21, 1998 alleging that he sustained emotional stress causally related to his federal employment. On the claim form he noted suspensions and constant confrontations regarding street times. In a decision dated March 22, 1999, the Office of Workers' Compensation Programs denied the claim, finding that no compensable work factors had been substantiated. By decision dated July 15, 1999, the Office denied modification of its prior decision.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to compensable work factors.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.<sup>1</sup> To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

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 illness

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where 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.<sup>3</sup>

The Board notes that in this case appellant has cited specific administrative actions by the employing establishment as contributing to his condition. He alleged that his request for a special inspection of his route in January 1998 was denied, that he received a letter of warning in February 1998 for unsatisfactory performance in completing his route, a 14-day suspension in March 1998 and another 14-day suspension in September 1998.

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.<sup>4</sup> The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.<sup>5</sup>

With respect to the denial of a request for special inspection, the postmaster indicated in an undated statement that it was denied because a general inspection of all routes was scheduled for February 1998. The record indicates that appellant filed a grievance over the matter; in a decision dated September 30, 1998, the grievance was denied by a labor relations specialist. The Board finds no probative evidence of error or abuse in the denial of a special inspection of appellant's route.

The record contains a letter of warning dated February 23, 1998 and a 14-day suspension dated March 24, 1998 for unsatisfactory performance in completing appellant's route. In agreements dated January 12, 1999, the letter of warning and suspension were removed, effective immediately. The agreements state that there was a mutually agreed upon settlement; there is no finding or admission of error by the employing establishment. The mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.<sup>6</sup> The Board accordingly finds no probative evidence of error or abuse in the above administrative actions of the employing establishment.

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>5</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>6</sup> *See Michael Thomas Plante*, *supra* note 5; *Richard J. Dube*, *supra* note 4 (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

Appellant further alleges that he was subject to harassment by employing establishment supervisors in that they constantly confronted him about his street times, told him to do things differently and could not offer assistance. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>7</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>8</sup>

The witness statements of record contain general observations that supervisors were spending more time with appellant and singling him out for observation and supervision. On the other hand, the postmaster stated that appellant was the only carrier who did not complete his route in the agreed upon time and numerous attempts were made to resolve issues regarding appellant's performance. There is no indication that appellant has filed a grievance or complaint with the Equal Employment Opportunity Commission regarding harassment. Based on the evidence of record, the Board finds no probative evidence establishing a claim based on harassment or discrimination in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>9</sup>

The decisions of the Office of Workers' Compensation Programs dated July 15 and March 22, 1999 are affirmed.

Dated, Washington, DC  
December 14, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>8</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>9</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).