

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH T. ROGERS and U.S. POSTAL SERVICE,  
POST OFFICE, Bethesda, MD

*Docket No. 98-1510; Submitted on the Record;  
Issued January 19, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

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

On November 25, 1996 appellant, then a 39-year-old clerk, filed a notice of traumatic injury and claim for compensation alleging that he had sustained stress due to actions of his supervisors while in the performance of his employment duties. Appellant specifically asserted that he had been harassed on several occasions by his supervisors, Ellon Bishop, Ethal Blackman and Darrell Bennett, regarding his use of sick leave and that this harassment culminated in his receipt, on November 25, 1997, of a letter of warning for irregular attendance. He specifically stated that while he had used a lot of sick leave, many of the hours cited by the employing establishment in its letter of warning had been approved in advance, that much of the remaining time used was in connection with several employment-related injuries and that all of the requested time was approved at the time it was requested. Appellant further asserted that by questioning the legitimacy of his need for sick leave, he felt the management was second guessing his doctors' orders and casting aspersions on his integrity, amounting to harassment. In support of his claim, appellant submitted medical evidence from his treating physicians, Dr. Smita H. Patel, a Board-certified psychiatrist and Dr. Richard H. Kastner, a psychiatrist.

The employing establishment controverted appellant's claim in a letter dated December 3, 1996, contending that appellant's stress was not sustained in the performance of duty and was not caused by his assigned work duties. The employing establishment stated that upon receipt of the letter of warning, appellant immediately threw it in the garbage and approximately 15 minutes later, filed the instant claim.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated March 25, 1997 on the grounds that appellant had not established that he sustained an emotional condition in the performance of his federal employment. Appellant requested an oral hearing and submitted additional medical and factual evidence. In a decision dated March 25,

1998, the Office hearing representative affirmed the Office's March 25, 1997 decision and did not reach the medical evidence.

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

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and a rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>1</sup> There must be evidence that implicated acts of harassment or discrimination did in fact occur supported by specific, substantive, reliable and probative evidence.<sup>2</sup>

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the 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 Federal Employees' Compensation Act.<sup>3</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>4</sup>

It is well established that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. A claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.<sup>5</sup> The Board has underscored that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable 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.<sup>6</sup> The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings, alone, are not

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<sup>1</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>2</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

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

<sup>4</sup> *Id.*

<sup>5</sup> *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>6</sup> *Norma L. Blank*, 43 ECAB 384 (1992).

compensable. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.<sup>7</sup>

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>8</sup>

In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the alleged unreasonable actions involving personnel matters on the part of the employing establishment. These include statements made by his supervisors, both written and oral, regarding his use of sick leave and a November 22, 1996 letter of warning for irregular attendance. None of these episodes constituted a factor of employment. Disciplinary matters consisting of discussions or letters of warning are actions taken in an administrative capacity and without evidence of error or abuse, are not compensable as factors of employment.<sup>9</sup>

The Board further finds that appellant failed to substantiate his claim that he was harassed or treated in an abusive or discriminatory manner. Appellant has not submitted any factual evidence to support these allegations. The only documentation in the record pertaining to appellant's allegations of harassment and/or discriminatory treatment was a January 21, 1998 letter of settlement by the Equal Employment Opportunity Commission (EEOC), issued in response to a grievance filed by appellant alleging that he had been discriminated against on the basis of race when his use of sick leave was questioned and the November 22, 1996 letter of warning was issued. The EEOC letter of settlement indicated that the parties had agreed that appellant would withdraw his complaint and that the letter of warning would be removed and rescinded from appellant's record. The letter further indicated, however, that the parties agreed that this settlement did not constitute an admission by the agency of any violation of law, rule or regulation with respect to the matters giving rise to the settlement. In addition, the Board has held that the mere fact that the employing establishment lessens or reduces a disciplinary action or sanction does not establish that the employer acted in an abusive manner towards the employee.<sup>10</sup>

The Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as he failed to provide any corroborating evidence for his allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which

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<sup>7</sup> *Id.*

<sup>8</sup> *Alfred Arts*, 45 ECAB 530 (1994).

<sup>9</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>10</sup> *See Richard J. Dube*, 42 ECAB 916 (1991).

do not support his claim for an emotional disability. For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

Accordingly, appellant has failed to establish a factual basis for his allegations that his claimed emotional condition was caused by factors of his employment.

The decision of the Office of Workers' Compensation Programs dated March 25, 1998 is hereby affirmed.

Dated, Washington, D.C.  
January 19, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member