

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN DOLIAS and U.S. POSTAL SERVICE,
POST OFFICE, Spring Valley, CA

*Docket No. 99-1439; Submitted on the Record;
Issued January 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

The Board has duly reviewed the case on appeal and finds that this case is not in posture for decision.

Appellant filed a claim on July 12, 1997 attributing his emotional condition to his federal employment. He is requesting disability compensation for the period starting July 11, 1997, when he stopped work, to October 28, 1997, the date he was released to return to work, and for which he used sick leave. Appellant submitted a statement and supporting documentation detailing incidents arising during the period July 3, 1996 to July 12, 1997 which gave rise to his emotional condition. Specifically, appellant alleged that he developed an emotional condition due to harassment by management, supervision by his supervisors, leave usage, instructions regarding work flow, scheduling of route inspections, overtime approval, comments on his performance, comments regarding his job performance by his supervisors, a referral to employee assistance program (EAP) posted in public, and that his route took more than eight hours to complete. The Office of Workers' Compensation Programs denied his claim by decision dated May 26, 1998. Appellant requested an oral hearing and by decision dated December 31, 1998, the hearing representative denied appellant's 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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an

employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.¹

The Office hearing representative found that many of appellant's allegations involved administrative actions taken by the employer and that appellant had not submitted sufficient evidence to establish error or abuse on behalf of the employing establishment in these administrative actions. Generally, actions of the employing establishment in administrative or personnel matters are not considered compensable employment factors. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter may afford coverage.²

Appellant alleged that on July 11, 1997 the employing establishment taped a note referring him to EAP to his timecard which was in plain view of all employees. The Office accepted that appellant was referred to EAP on July 11, 1997. The record contains no evidence from the employing establishment regarding the placement of the note referring appellant to EAP. The Board finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Federal Employees' Compensation Act.³ Although the handling of referral to EAP is generally related to the employment, it is administrative functions of the employer, and not a duty of the employee.⁴ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁵ Although appellant has claimed that the employing establishment committed error and abuse with respect to the EAP referral, he has not submitted evidence establishing error or abuse on the part of employing establishment. Appellant has not submitted any evidence to support that posting of the EAP address with his employee badge was improper. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation of harassment and discrimination, the hearing representative found that appellant had not established that the employing establishment had harassed or discriminated against him. An employee's charge that he was harassed or discriminated against is not determinative of whether harassment or discrimination occurred.⁶

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

² *Gregory N. Waite*, 46 ECAB 662 (1995).

³ See *Jimmy Gilbreath*, 44 ECAB 555 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁴ *Id.*

⁵ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁶ *O. Paul Gregg*, 46 ECAB 624 (1995).

For harassment to give rise to a compensable disability under the Act,⁷ there must be some evidence that acts alleged or implicated by the employee did, in fact, occur.⁸ The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. Regarding appellant's allegations that harassment caused his emotional condition, the Board finds that the decision of the Office hearing representative dated and finalized on December 31, 1998, is in accordance with the facts and the law in this case.⁹ The Board hereby adopts the findings and conclusions of the hearing representative regarding the allegations of harassment and discrimination.

However, regarding appellant's allegation of overwork, the Board has held that overwork may constitute a compensable factor of employment.¹⁰

In the instant case, the record contains evidence that appellant's carrier route required more than eight hours per day. The Office hearing representative, in evaluating this evidence, noted that the record contained evidence supporting appellant's allegation that his route took longer than eight hours. However, he noted that the employing establishment's argument that appellant "could be performing at a higher level" had merit and, thus, found that it was not accepted that the route took longer than eight hours. The record contains evidence supporting appellant's allegation that his route took longer than eight hours and that he experienced difficulty in preparing for and completing his postal route. As this relates to appellant's regular and specially assigned work duties, the Board finds that appellant has established a compensable factor of employment.¹¹

The record contains the report of Dr. Ana Maria Andia, Board-certified in psychiatry, neurology and forensic medicine. In a November 9, 1997 report, Dr. Andia diagnosed adjustment disorder with mixed anxiety and depressed mood due to noted various employment incidents and opined that appellant's disability was due to various events in the workplace during the period July 3, 1996 to July 12, 1997, which she had noted in the history of appellant's illness.

As appellant has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. Since the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose. After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.¹²

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Elizabeth Pinero*, 46 ECAB 123 (1994).

⁹ The Board has held that criticism alone is not a compensable factor absent a showing of error or abuse by the employing establishment. *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁰ *See Sandra F. Powell*, 45 ECAB 877 (1994).

¹¹ *See Lillian Cutler*, *supra* note 1.

¹² *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

The decisions of the Office of Workers' Compensation Programs dated May 26, 1998 and the Office hearing representative dated December 31, 1998 are affirmed in part, set aside in part and the case remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
January 24, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member