

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. FORTSON and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 98-1575; Submitted on the Record;
Issued July 13, 2000*

DECISION and ORDER

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

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

On November 2, 1995 appellant filed a claim that job stress had aggravated her depression, hypertension and panic attacks. Appellant stopped work on November 3, 1995. In a statement accompanying her claim, appellant stated that on July 1, 1995 she returned to work after a three-year term as a full-time union secretary-treasurer, that on July 26, 1995 she became ill with depression and panic attacks, and that she was out sick with depression, panic and anxiety from August 26 to September 15 and from September 19 to October 23, 1995.

By decision dated July 8, 1996, the Office of Workers' Compensation Programs found that fact of injury was not established for the reasons that there was insufficient evidence that the events cited by appellant occurred as alleged, and that the medical evidence did not support a causal relation between appellant's employment and her emotional condition. Following a hearing held on April 29, 1997 at which appellant further described the incidents and conditions to which she attributed her emotional condition, an Office hearing representative, by decision dated January 14, 1998, found that appellant had not substantiated her allegations of intimidation, harassment and verbal abuse by management at the employing establishment, that she had not proven the occurrence of at least one employment factor at the time, place and in the manner alleged, and that she therefore had not met her burden of proving that she sustained an emotional condition in the performance of duty.

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

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 her 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.¹

Thus, appellant's fear of being terminated upon hearing rumors from coworkers is not covered under the Act.² Her fear of ridicule and reprisal upon her return to work in July 1995 can only be considered self-generated.³

Many of appellant's allegations concern administrative or personnel matters, unrelated to her regular or specially assigned work duties. Such matters are generally related to the employment, but are administrative functions of the employer, not duties of the employee. Coverage will only be afforded regarding such matters only if error or abuse by the employing establishment is established.⁴ Appellant has not established that the employing establishment acted unreasonably in monitoring her activities,⁵ in issuing her a letter of warning regarding her absences,⁶ or in assigning her to the day shift.⁷ The fact that the employing establishment removed absence-without-leave letters from appellant's file and changed her absence without leave to leave without pay does not, in and of itself, establish error or abuse.⁸ Appellant has also not shown any error or abuse in the employing establishment investigating her for fraud regarding attendance at a convention.⁹

The December 26, 1990 note from the employing establishment's general foreman to appellant's supervisor asking him to tell appellant to improve her personal hygiene because "everyone is upset with her strong b.o." also falls into the category of an administrative or personnel matter of the employing establishment. This note was prepared in response to complaints from one or more of appellant's coworkers, and was not intended for distribution to appellant or other nonmanagerial employees. If there was any employing establishment error or abuse regarding this note, it would have to be in compromising its confidentiality by leaving it

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

² *Artice Dotson*, 42 ECAB 754 (1990).

³ See *Gracie A. Richardson*, 42 ECAB 850 (1991) (the Board found that the employee's fear of gossip was a personal frustration clearly not related to her job duties or requirements and thus not compensable).

⁴ *Janet I. Jones*, 47 ECAB 345 (1996).

⁵ *Jimmy Gilbreath*, 44 ECAB 555 (1993).

⁶ *Apple Gate*, 41 ECAB 581 (1990).

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

⁸ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁹ *Jimmy B. Copeland*, 43 ECAB 339 (1991).

where it could be viewed by persons to whom it was not addressed. However, appellant stated that she noticed this note “sticking out on [her supervisor’s] desk” and picked it up and read it. Appellant has not shown any employing establishment error or abuse in the matter of this note.

Some of appellant’s allegations involve matters that could be considered compensable factors of employment. However, where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁰ Appellant has not submitted any evidence to substantiate her allegations that she was improperly denied light duty,¹¹ that she was improperly denied time for union representational functions,¹² or that supervisory personnel made disparaging comments about her weight or in response to her request to visit her sick daughter. Verbal abuse can be covered under the Act, but it must be substantiated.¹³ Appellant also has not provided sufficient details on an alleged August 12, 1988 altercation with her supervisor for this incident to be considered for coverage under the Act.

Appellant also has alleged harassment and intimidation by employing establishment management officials. The Board has held that actions of an employee’s supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.¹⁴ Other than the specific incidents addressed above, appellant has not presented specific incidents of alleged harassment and discrimination, and her general statements that she was harassed by management are not specific enough to be considered for coverage under the Act.

Appellant has not cited and substantiated any compensable factors of employment as the cause or aggravator of her emotional condition. She therefore has not met her burden of proof.

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹¹ *See Diane C. Bernard*, 45 ECAB 223 (1993).

¹² *See Marie Boylan*, 45 ECAB 338 (1994).

¹³ *Garry M. Carlo*, 47 ECAB 299 (1996).

¹⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

The decision of the Office of Workers' Compensation Programs dated January 14, 1998 is affirmed.

Dated, Washington, D.C.
July 13, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member