

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET LYNCH and U.S. POSTAL SERVICE,
PURITAS PARK POST OFFICE, Cleveland, OH

*Docket No. 98-2299; Submitted on the Record;
Issued March 8, 2000*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty.

On July 28, 1997 appellant, then a 50-year-old postal clerk, filed a claim for stress which she related to badgering and stalking from her supervisors, including two disciplinary actions issued on the same day for reasons which appellant declared were "made up." She had stopped working on April 11, 1997. In a December 10, 1997 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to show appellant's claim had occurred in the performance of duty. Appellant requested a hearing before an Office hearing representative which she subsequently changed to a request for a review of the written record. In a June 18, 1998 decision, the Office hearing representative found appellant had not established she had sustained a compensable factor in the performance of duty. He therefore affirmed the December 10, 1997 decision.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. 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 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. 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.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant indicated that she received four disciplinary actions in four months, two on October 7, 1996 and two in February 1997. She contended that all the actions were based on false charges. Appellant claimed she was singled out for these actions because other clerks at the employing establishment did not receive disciplinary actions, much less two in one day. She submitted copies of the October 7, 1996 letters of warnings and the February suspension notices. In one letter of warning, appellant was charged with failure to follow instructions. She was instructed that she was no longer needed as a backup window clerk and was told not to enter her window drawer in the employing establishment's lobby unless instructed by a supervisor. The letter of warning indicated that appellant failed to adhere to these instructions on three days in that she opened her window drawer without instructions. In the second letter of warning, she was charged with conduct unbecoming an employee because, on October 4, 1996, after failing to follow the instructions of her supervisor, she engaged in a verbal confrontation with the supervisor on the workroom floor. Appellant contended that she had been instructed that she was no longer the lunchtime relief but was to back up one particular window clerk. She claimed she was following instructions when her supervisor began to badger her in a window location. Appellant related that her supervisor called her "the worst clerk in the world" and claimed she did not follow instructions. Appellant stated that, after five minutes of badgering, she told her supervisor in a normal tone of voice that her statement was a lie. The letters of warning were withdrawn on February 19, 1997.

On February 7, 1997 appellant received a notice of a seven-day suspension for failure to maintain a regular work schedule because she was absent without leave on six days between January 25 and February 6, 1997. On February 10, 1997 she received notice of a 14-day suspension because she was absent without leave on February 7 and February 8, 1997. Appellant contended that she had called in the six days mentioned in the first notice, seeking sick leave. She stated that she worked 46 hours in that pay period for which she did not receive pay. Appellant claimed that the second suspension notice was rescinded almost immediately after it was issued. She contended that at least four other postal clerks would come in late and were never charged with being absent without leave.

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

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

Appellant stated that after a two-week illness of total disability, she returned to work on March 1, 1997 and worked until April 30, 1997. She contended that she was harassed by management by being stalked, reprimanded, threatened, insulted and not allowed to perform her duties. Appellant claimed that she was pulled off her assignments for at least a half-hour each day to be abused by the manager of the day. She stated that she was not allowed to talk to coworkers, not allowed to take breaks and was often expected to work through lunch. Appellant indicated that on April 29, 1997 she was threatened with disciplinary action by one supervisor for something that employees had been doing daily for seven years. She submitted copies of earlier complaints she had filed and earlier disciplinary actions to which she had been subjected. On May 15, 1986 appellant filed a complaint alleging sex and gender discrimination after she received a notice of a seven-day suspension. The suspension was subsequently reduced to a letter of warning which would be removed from her file if she had no further disciplinary actions taken against her. On October 16, 1990 she was found to be \$84.16 short in her accounts and was required to repay the employing establishment. In a March 31, 1991 settlement of a grievance, her accountability for several audit results was reduced to \$100.00. On two occasions, grievances were resolved by payment of overtime. Appellant filed a claim alleging sex discrimination and reprisal on December 4, 1990 which was followed by the January 16, 1991 notice of suspension. By agreement, the notice was reduced to a letter of warning and then an official discussion. On June 19, 1995 appellant received a letter of warning for failing to clock in properly. On December 23, 1995 appellant received a letter of warning in lieu of a seven-day suspension for a delay in opening her window after preparing personal Christmas cards at work and, when instructed to open her window by her supervisor, responded in front of customers that she was being harassed.

The employing establishment submitted various records and memoranda relating to appellant's actions. Appellant's supervisor indicated that she was disruptive at work as a result of inappropriate behavior. He stated that no demands were placed on appellant beyond those placed on other employees. Appellant's supervisor noted that she was frequently tardy or absent and refused to complete the appropriate forms to keep track of her attendance. He commented that appellant would be deliberately late to create a negative impact on daily morning goals of the employing establishment. He reported that she had been observed sitting in her car in a parking lot of a convenience mart next to the employing establishment when she was already late for work. He indicated that appellant would constantly leave her duty station to perform meaningless tasks or personal grooming which would curtail mail processing functions. In a series of journal entries, a January 25, 1997 note indicated that appellant was scheduled to report at 4:30 a.m. At 7:30 a.m. she called to say she had just woke up and was going to take a shower. At 10:00 a.m. a message was left for her to not report for work because there was not eight hours of work available. At 11:15 a.m. she called to indicate that she could not work past noon. She was then informed that she was absent without leave. Appellant began yelling, at which point the supervisor ended the conversation and hung up the telephone. Over the next few weeks, journal entries documented times when appellant did not appear to work or was late to work and was found to be absent without leave. On two occasions, she called to say she was on her way to work but did not arrive until four to five hours after the telephone call. On three occasions in March 1997 appellant clocked in at 4:30 a.m. while her daughter was in the car and then left the employing establishment, returning at 5:00 a.m. after dropping her daughter off with a sitter. On

March 29, 1997 appellant came in after lunch, stated that a tire on her car was flat and accused coworkers of puncturing her tire.

Appellant has claimed that the disciplinary actions caused stress. However, the disciplinary actions, including suspensions, letters of warning and discussions are not related to appellant's assigned duties but are administrative actions. As such, these actions cannot be considered to be compensable factors of employment unless appellant demonstrates that the actions were erroneous or abusive.⁴ Although appellant has contended that these actions had no basis in fact, particularly the disciplinary actions taken in October 1996 and February 1997, she had not submitted any persuasive evidence to support her contentions. To the contrary, the evidence of record shows that the actions were taken for refusal to follow instructions, arguing with a supervisor and being absent without leave by not appearing for work when scheduled or being late for work. Even though the disciplinary actions were subsequently rescinded or reduced in severity, there is no evidence of record that the rescissions or reductions constituted an admission of error on the part of the employing establishment.

Appellant made a general allegation that her emotional condition was in part due to harassment by her supervisors and coworkers. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁵ Appellant contended that she was insulted and shouted at by supervisors and noted that her tire had been flattened, which she blamed on coworkers. The evidence of record, however, does not substantiate her claims of being insulted. The evidence indicates that she entered into arguments with her supervisors and coworkers and was not subjected to one-sided verbal abuse. While appellant claimed that her tire was flat due to actions of coworkers, there is no evidence of record to establish the responsibility for the flat tire. She therefore has not established that she was subjected to harassment at work.

Appellant contended that she was not paid for 46 hours that she had worked. This factor, if established, would be a compensable factor of employment because it would be directly related to the performance of appellant's assigned duties and an employing establishment error in not paying her for work done. However, the evidence of record did not establish that the employing establishment failed to pay appellant for overtime that she worked. Appellant, therefore, has not established that she had any compensable factors of employment to which she related her emotional condition. Appellant, as a result, did not show that she sustained an injury in the performance of duty.

⁴ *Effie O. Morris*, 44 ECAB 470 (1993).

⁵ *Joan Juanita Greene*, 41 ECAB 760 (1990).

The decisions of the Office of Workers' Compensation Programs, dated June 18, 1998 and December 10, 1997, are hereby affirmed.

Dated, Washington, D.C.
March 8, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member