

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of FRANK J. MUHAMMAD and U.S. POSTAL SERVICE,  
VEHICLE MAINTENANCE FACILITY, Raleigh, NC

*Docket No. 99-951; Oral Argument Held February 3, 2000;  
Issued March 9, 2000*

Appearances: *Frank J. Muhammad, pro se; Sheldon G. Turley, Jr., Esq.,*  
for the Director, Office of Workers' Compensation Programs.

---

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On August 20, 1997 appellant, then a 44-year-old automotive mechanic, filed a claim for an occupational disease (Form CA-2) alleging that his adjustment disorder with anxiety was caused by factors of his employment. Appellant stopped work on August 5, 1997, the date he was last exposed to conditions alleged to have caused his disease or illness.<sup>1</sup> Appellant's claim was accompanied by factual and medical evidence.

In an October 16, 1997 letter, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office then advised appellant to submit additional factual and medical evidence supportive of his claim. By response dated November 10, 1997, appellant submitted additional factual and medical evidence.

By decision dated January 30, 1998, the Office found the evidence of record insufficient to establish fact of injury. In a February 9, 1998 letter, appellant requested an oral hearing before an Office hearing representative and submitted additional evidence.

---

<sup>1</sup> The record reveals that appellant retired from the employing establishment effective May 11, 1998.

In a November 18, 1998 decision, the hearing representative affirmed the Office's decision.<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 has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.<sup>3</sup>

Perceptions and feelings alone are not compensable. 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>4</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>5</sup>

In this case, appellant has alleged that his emotional condition was caused by threats and racial incidents at the employing establishment. Specifically, appellant stated that in the breakroom, he discovered a "Klu Klux Klan" flier on the facsimile machine table that stated "PLEASE No Fires After 11 p.m." Appellant also stated that he was provided a letter written by Ken Dimico, his manager, to Shawn Bennett, another employing establishment manager, a coworker named Raymond, which contained a list of work for Mr. Bennett to perform in Mr. Dimico's absence. In this letter Mr. Dimico instructed Mr. Bennett to "[c]all Grady if you need help or have questions on anything. I know he will be glad to help. If you have to shoot anyone before I get back, so be it." Appellant alleged that he interpreted this comment as a personal threat directed at him.

In support of his allegations, appellant submitted the flier and Mr. Dimico's letter. Contrary to the hearing representative's finding that the above allegations were not established

---

<sup>2</sup> On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; see *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1).

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

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>5</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

as having occurred by the evidence of record, the Board finds that they are established as having occurred by evidence present in the case record. There is no contrary evidence in the record.

The Board, however, finds that appellant's allegations do not constitute compensable employment factors. Appellant has not established that either the flier or Mr. Dimico's letter relate to his regular or specially assigned work duties. Appellant has not established that the flier was sent or otherwise directed to him, only that it was found next to the facsimile machine. Similarly, the copy of Mr. Dimico's instructions to Mr. Bennett does not constitute evidence of a credible threat by appellant's supervisor.<sup>6</sup> An April 30, 1998 decision of the Equal Employment Opportunity Commission found no discrimination by the employing establishment based on race, color or retaliation regarding appellant's allegations that he did not receive any of the jobs he had bid on and the employing establishment's denial of his request to work on his designated/actual holiday, which was December 25, 1995.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>7</sup>

The November 18, 1998 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Dated, Washington, D.C.  
March 9, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>6</sup> See *Leroy Thomas*, 46 ECAB 946 (1995).

<sup>7</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).