

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VICTORIA E. VIGUE and U.S. POSTAL SERVICE,  
POST OFFICE, Seminole, FL

*Docket No. 99-109; Submitted on the Record;  
Issued May 16, 2000*

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DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she developed an emotional condition due to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof to establish that she developed an emotional condition due to factors of her federal employment.

On December 26, 1997 appellant, then a 51-year-old letter carrier, filed a claim for traumatic injury, Form CA-1, alleging that on December 22, 1997 she had a stress reaction when she learned that she would be required to work on December 26, 1997, her nonscheduled day off. The Office of Workers' Compensation Programs denied her claim by decision dated March 2, 1998. Appellant requested reconsideration and submitted additional evidence and in a decision dated August 25, 1998, the Office found the newly submitted material insufficient to warrant modification of its prior decision.

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 or to hold a particular position.<sup>1</sup>

In a narrative statement submitted in support of her claim, appellant, who works a rotating schedule with Sundays off, asserted that on December 22, 1997 she was told by her

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

supervisor that she would have to work on December 26, 1997, a Friday and her nonscheduled day off. She explained that she had long-standing plans to begin annual leave on the following Monday, December 29, 1997 and was looking forward to a long weekend leading up to her vacation. Appellant stated that she tried to explain to her supervisors that working on Friday would conflict with her family plans and that she became extremely distraught by her employer's insistence that she report to work, especially when she learned that another employee had also been asked to work on that day, but was then excused because the employee had airplane tickets. She felt she had been singled out and discriminated against. On December 24, 1997 appellant sought medical treatment and obtained a note from her physician finding her totally disabled from December 26, 1997 through January 11, 1998.<sup>2</sup> The employing establishment controverted the claim, stating that, in order to ensure that routes are covered and the mail delivered, sometimes carriers have to be scheduled to work on their nonscheduled days off.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. However, 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>3</sup>

The Board has held that issues regarding leave<sup>4</sup> are administrative matters and that absent evidence of error or abuse will not be considered factors of employment. Appellant has not submitted any evidence of error or abuse on the part of the employing establishment regarding leave denial or requirements. The record reflects that appellant worked a rotating schedule with Sunday as her only guaranteed day off, and thus, the employing establishment reasonably requested that she work on her nonscheduled day off. Therefore, she has not established these factors of employment.

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<sup>2</sup> In a separate narrative statement, which appellant stated she was submitting in support of a possible occupational disease claim, she asserted that beginning in September and October 1997, her job began to be more and more stressful due to the employing establishment's decision to cut back overtime. She asserted that the policy was unsuccessful and actually created a backlog of mail to be delivered and that eventually overtime was again instituted and there was a mad scramble to deliver the backlog of mail. Appellant stated that this increased stress caused her to have stomach and intestinal problems, including constipation. A physician advised her to drink a lot of water, but this caused problems in itself, as she did not always have ready access to restroom facilities on her route and several times had to obtain a note from her physician allowing her to remain in the office. Appellant stated that she then went on vacation from November 8 until November 25, 1997 and that when she returned there was a huge amount of bulk mail to be delivered and again no overtime allowed. This mail then piled up as the Christmas parcels started coming in. Finally, when overtime was again allowed, the employees had to work extremely long shifts to handle the backlog. She stated that, while the next two weeks were hectic, the backlog of mail was finally cleared and she began looking forward to her upcoming long vacation, only to be told she had to work on her nonscheduled day off. In its March 2, 1998 decision, the Office advised appellant to file a Form CA-2, claim for occupational disease, if she believed these other factors caused or aggravated her emotional condition.

<sup>3</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>4</sup> *Joe L. Wilkerson*, 47 ECAB 604, 606 (1996).

With respect to appellant's assertion that the employing establishment discriminated against her by excusing another employee from working on the day in question, 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 of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>5</sup> Appellant has submitted no evidence that the employing establishment harassed or discriminated against her. For example, there is no evidence in the record that another employee was originally scheduled to work on December 26, 1997 and was then excused from work as he had already purchased airplane tickets. Furthermore, even had appellant submitted evidence supporting that these events took place, she would still have the burden to establish that such actions on the part of the employing establishment constituted discrimination. Therefore she has not established these allegations as factors of employment.

As appellant has not submitted the necessary evidence to establish a factor of employment, she has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.<sup>6</sup>

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<sup>5</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>6</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 (1992).

The decisions of the Office of Workers' Compensation Programs dated August 25 and March 2, 1998 are hereby affirmed.

Dated, Washington, D.C.  
May 16, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member