

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH PIETRO and U.S. POSTAL SERVICE,  
POST OFFICE, Fort Lauderdale, FL

*Docket No. 99-1386; Submitted on the Record;  
Issued November 2, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

In the present case, appellant filed a claim alleging that on August 25, 1997 he sustained an emotional condition causally related to viewing an "illegally circulated prearbitration decision revoking my EEOC [Equal Employment Opportunity Commission] accord..." By decision dated November 3, 1997, the Office denied the claim, finding that appellant had not established a compensable work factor. In decisions dated February 2 and May 28, 1998, the Office denied modification of the prior decision. By decision dated February 9, 1999, the Office determined that appellant's October 13, 1998 request for reconsideration was insufficient to warrant further merit review of the claim.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to compensable work factors.

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>1</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;

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<sup>1</sup> Pamela R. Rice, 38 ECAB 838 (1987).

and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his 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.<sup>3</sup>

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.<sup>4</sup> The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.<sup>5</sup>

Appellant alleged that on August 25, 1997 he found a copy of a prearbitration settlement agreement on his desk. The record contains a copy of the agreement, dated July 16, 1997, stating that appellant would be reassigned to his former tour of duty within 30 days.<sup>6</sup> Appellant contends that the settlement was erroneous in that it violated a prior EEOC agreement; he also alleges that the agreement was placed on his desk to intentionally cause an emotional reaction.

With respect to the allegation that the July 17, 1997 prearbitration agreement constituted error by the employing establishment, the record does not contain sufficient evidence to establish error. In a letter dated September 3, 1997, an employing establishment human resources coordinator indicated that the agreement had not been released by the employing establishment and was null and void. The employing establishment indicated that at a meeting on August 26, 1997 appellant was advised that the purported agreement would have no effect on his work hours or duties. In a letter dated November 19, 1997, the employing establishment stated that, after the July 16, 1997 agreement had been signed, it was discovered that it would effect appellant's EEOC agreement and therefore it was considered null and void. The employing establishment indicated that the union president was informed that the agreement was null and void, and was advised not to release the agreement.

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<sup>2</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

<sup>4</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>5</sup> See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>6</sup> The agreement was signed by a union representative and an employing establishment labor relations specialist.

Under these circumstances, the Board does not find probative evidence of error or abuse by the employing establishment. There is no evidence that the employing establishment intended or in fact did issue the agreement, and they promptly explained to appellant that it was null and void.

With respect to the allegation that the July 16, 1997 agreement was placed on appellant's desk as a deliberate attempt to injure him, there is no evidence to support this allegation. There is no probative evidence of record as to who placed the agreement on appellant's desk, or for what purpose. In the absence of such evidence, the Board finds that appellant has not established a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>7</sup>

The Board further finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>8</sup> the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>9</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>10</sup>

In this case, appellant's October 13, 1998 request for reconsideration did not meet any of the above requirements for reopening a claim for merit review. The evidence submitted was not relevant to the present issue,<sup>11</sup> nor did appellant submit a relevant legal argument or show that the Office erroneously applied or interpreted a specific point of law. Accordingly, the Board finds that the Office properly denied appellant's request for reconsideration without merit review.

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<sup>7</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>8</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> 20 C.F.R. § 10.608(b); see also *Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>11</sup> Appellant submitted medical evidence regarding a tinnitus condition and hearing loss, which is not an issue in this claim.

The decisions of the Office of Workers' Compensation Programs dated February 9, 1999 and May 28, 1998 are hereby affirmed.

Dated, Washington, DC  
November 2, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member