

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALVIN L. WOOLEY and U.S. POSTAL SERVICE,
ATLANTA GENERAL MAIL FACILITY, Atlanta, GA

*Docket No. 98-1861; Submitted on the Record;
Issued September 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an occupational injury in the performance of duty.

On October 24, 1995 appellant, then a 47-year-old postmaster, filed a claim for advanced heart disease. He indicated that he had been on extended sick leave since April 22, 1995 due to heart disease. In an accompanying statement, appellant related his heart condition to a heart attack he sustained on June 8, 1988 which he attributed to stress at work. In an August 5, 1996 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed injury had occurred in the performance of duty. In an August 10, 1996 letter, appellant requested a hearing before an Office hearing representative which was conducted on January 30, 1997. In a May 6, 1997 decision, the Office hearing representative found that appellant had not established any compensable factor of employment. He affirmed the Office's August 5, 1996 decision. In a March 8, 1998 letter, appellant requested reconsideration. In a March 31, 1998 merit decision, the Office denied modification of its prior decisions.

The Board finds that the case is not in posture for decision.

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 his 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 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 stated that in February 1987 he transferred from Oakland, California to Atlanta, Georgia to take the position of manager of the Atlanta General Mail Facility. On January 7, 1988 Richard Carleton, who had become the postmaster, informed appellant that he was sending appellant on a detail because he felt he needed to make a change as the productivity of the employing establishment had fallen since he last served as postmaster and because he disagreed with appellant's assignments of managers who had previously worked under Mr. Carleton. Appellant was offered a detail to Montgomery, Alabama, which he accepted because the only alternative would be a make work detail elsewhere. While on detail, he was informed by a coworker that he was not expected to return to his position in Atlanta. He alleged that he called Mr. Carleton, who informed appellant that he did not have a place for him on his team, that he could offer appellant other positions, but that he did not want appellant in Atlanta. Mr. Carleton allegedly stated that he and appellant could either do it the easy way or the hard way. Appellant filed a grievance and an Equal Employment Opportunity (EEO) complaint. He returned to the employing establishment in mid-March 1988 but claimed he was given pointless assignments for two months instead of being returned to his former position. He filed another EEO complaint on May 3, 1988 and was returned to his former position, over Mr. Carleton's protests, in a settlement with the employing establishment. He claimed that after he returned to his former position, his subordinate managers second guessed his decisions or refused to follow his instructions because they knew Mr. Carleton would protect them. He stated that he had to go to his superior to get permission to deal with incidents of gross insubordination. He had his first heart attack on June 9, 1988, approximately three weeks after he returned to his former position.

Appellant contended that Mr. Carleton's effort to displace him from his position as a manager at the employing establishment violated the rules and procedures of the employing establishment. He indicated that in only limited circumstances could a supervisor relocate or reassign subordinates, such as the failure of lesser measures to correct deficiencies in behavior or performance, the gravity of the offense or position misranking. He indicated that temporary reassignments for developmental or training purposes were also permitted. He claimed that Mr. Carleton did not cite any of those reasons as a basis for his detail. Appellant contended that if his work performance had been unsatisfactory in any way, his supervisor was required to give

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).

him prior notification in citing specific deficiencies, a statement of clearly defined charges and the opportunity to provide a defense. He claimed that each of those elements was absent in Mr. Carleton's actions. He contended that Mr. Carleton was attempting to force him to accept a demotion in either pay or grade and would, therefore, be considered an adverse action. The Office found that appellant's transfers to other positions were administrative actions and, therefore, were not within the performance of duty as defined by *Cutler* and *McEuen*. The Office further found that there was no evidence of administrative error or abuse in the job assignments given to appellant. The Office hearing representative noted that there was no EEO finding or settlement which made a specific finding of error or abuse. He found, therefore, in the absence of definitive evidence of error or abuse, the emotional reaction to the transfer to Montgomery, Alabama, did not constitute a compensable factor. The Board notes, however, that appellant's allegations do not refer just to his detail assignment to Montgomery, Alabama, but to the removal from his position as manager at the employing establishment until he was reinstated in a settlement. However, appellant has not submitted sufficient evidence supporting his allegations to substantiate his contention that the actions of the employing establishment constituted error or abuse. Moreover, there are no findings or authoritative opinions from the employing establishment or other government organizations that support his contention that his supervisor's actions constituted error or abuse.

Appellant stated that after his heart attack, he returned to work and accepted a transfer into the position of Director of support services which gave him responsibility for maintenance, construction, supplies, services, copying and support for the entire postal district. He noted that he had no training or background for the position but was provided training. He alluded to other problems while he was receiving training but did not discuss the specific details in his testimony at the hearing. He noted that the position experienced had time pressure in getting facilities built and stress in giving presentations. He was hospitalized twice while he held this position. In 1992, during a reorganization of the employing establishment, his position was abolished and he became a postmaster. Appellant stated that he had no training for this position, and became responsible for mail processing operations, carriers, customer service and customer complaints. He also prepared budgets and monitored productivity levels. He noted that, at times, he received the resources needed to improve productivity at his establishment but not always. Appellant indicated that after he returned to work as a manager at the employing establishment, his subordinates questioned his orders.

The Board finds that these matters relate to appellant's duties as a supervisor and, therefore, would be considered compensable factors. Appellant alleged stress in handling construction time pressures as Director of support services; in his position as a postmaster, which included managing mail processing, the personnel of his post office, customer complaints, budgets and productivity matters. These matters relate to the performance of appellant's regular and specially assigned duties and, therefore, would be considered compensable factors of his employment. The Office did not consider these factors in determining whether appellant had sustained an injury in this case.

The case will, therefore, be remanded to the Office for preparation of a statement of accepted facts pertaining to appellant's job duties. The Office should then develop the medical evidence to establish that appellant's heart condition was causally related to any of the accepted

factors of employment. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated March 31, 1998, is hereby set aside and the case remanded for further development as set forth in this decision.

Dated, Washington, DC
September 18, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member