

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES R. ALORD and U.S. POSTAL SERVICE,
POST OFFICE, Reading, MA

*Docket No. 00-170; Submitted on the Record;
Issued April 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On November 8, 1997 appellant, then a 41-year-old mailhandler, filed a notice of occupational disease and claim for compensation alleging that he suffered from depression and stress due to factors of his federal employment. He stopped work on September 30, 1997 and has not returned.

Appellant has alleged that his emotional condition was caused by management's denial of his request for leave under the Family Medical Leave Act (FMLA) to care for his brother who was diagnosed with a brain tumor. He also stated that on September 30, 1997 he was requested to provide medical documentation for sick leave he took on September 27, 1997. According to appellant, he was informed by Armand Scapiccio that the documentation was necessary because appellant's supervisor, Ray DeMonico, believed that appellant had not been sick when he left work on September 27, 1997. Appellant related that he was told by Mr. Scapiccio that Mr. DeMonico suspected appellant of leaving work because he did not like his job assignment for that day. He contends that when he confronted Mr. Scapiccio about the required medical documentation, Mr. Scapiccio denied that he had been concerned about appellant's motives for leaving work on the date in question. Appellant apparently returned to talk to Mr. DeMonico, at which time was told that the medical documentation was needed for "the protection of the service." It is appellant's position that Mr. DeMonico lied about the need for medical documentation for the sick leave used in order to harass appellant.

In a November 25, 1997 letter, the employing establishment stated that appellant had been asked for medical documentation because he had been abusing his sick leave and was using leave without pay on numerous occasions.

In a statement received by the Office of Workers' Compensation Programs on January 27, 1998, Mr. DeMonico stated:

“On September 27, 1997 [appellant] was assigned to me as my mailhandler. I explained to [him] that he would have to do both the front and back of the OCR operations. I had also mentioned that this is Saturday and it is usually a light day. [Appellant] did not like the fact that he had to do both jobs and requested to see a union steward to discuss this matter with [Mr. Scapiccio], SDO in charge of the scheduling for this day. A short while later [appellant] informed me he was going home sick.”

In a March 9, 1998 statement prepared by union stewards, Robert Fisher and Sean M. Sweeny, it is alleged that appellant was lied to by Mr. DeMonico and that appellant was harassed by management with regard to his requests for sick leave and medical leave under FMLA.

In a decision dated January 7, 1999, an Office hearing representative affirmed the Office's April 6, 1998 decision which had denied the claim.

On March 5, 1999 appellant requested reconsideration and submitted documentation from the Employee Assistance Program indicating that he filed a complaint for alleged harassment concerning an incident when appellant was accused on December 5, 1995 “of messing with another employee's crackers.”

In a June 1, 1999 decision, the Office denied modification of the January 7, 1999 Office decision.

The Board finds that appellant failed to carry his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his employment.¹ This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition for which he or she claims compensation.² This burden also includes the submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of appellant, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of his federal employment.³

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

¹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

² *See generally* 20 C.F.R. §§ 10.115-10.116 (1999).

³ *See Ruth C. Borden*, 43 ECAB 146 (1991).

of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found 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 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 coverage of the Federal Employees' Compensation Act.⁴

In the present case, appellant contends that he was under a great deal of stress and became depressed when the employing establishment denied his request for leave under the FMLA to care for his sick brother, and when it required him to provide medical documentation for the use of sick leave on September 27, 1997. The Board, however, has held that disputes about an administrative or personnel matter, such as leave usage, is not related to an employee's regular or specially assigned work duties.⁵ An administrative matter or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.⁶ The Board has duly reviewed the record and finds no probative evidence that appellant's supervisors acted abusively in denying his leave request under the FMLA. Although appellant contends that he was harassed by Mr. DeMonico on September 30, 1997 when he was asked to bring in a doctor's slip to document his use of sick leave on September 27, 1997, the record does not show that Mr. DeMonico acted abusively in wanting to verify that appellant was sick when he left work on the day in question. Statements from the employing establishment indicate that appellant had been suspected of abusing his sick leave; therefore, Mr. DeMonico's actions do not appear to be based solely on a desire to harass appellant. Moreover, there is no factual support for appellant's allegations of harassment with regard to the incident of December 5, 1995.

Mere perceptions of harassment alone are not sufficient to establish compensability under the Act.⁷ Because appellant has failed to corroborate his allegations of harassment with factual support in the record, he has failed to allege a compensable factor of employment. Consequently, the Board finds that the Office properly denied his claim for compensation.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Beverly Diffin*, 48 ECAB 125 (1996).

⁶ *Mary Margaret Grant*, 48 ECAB 696 (1997).

⁷ *Anna C. Leanza*, 48 ECAB 115 (1996).

The decisions of the Office of Workers' Compensation Programs dated June 1 and January 7, 1999 are hereby affirmed.

Dated, Washington, DC
April 2, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member