

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SUSAN CLANCY and U.S. POSTAL SERVICE,  
MEDFORD POST OFFICE, Medford, MA

*Docket No. 00-1605; Submitted on the Record;  
Issued April 6, 2001*

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DECISION and ORDER

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

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

On November 4, 1998 appellant, then a 37-year-old letter carrier, filed a claim for emotional stress which she related to harassment by her supervisor on October 13, 1998. In an April 13, 1999 decision, the Office of Workers' Compensation Programs rejected appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. She requested a hearing before an Office hearing representative which was held on August 16, 1999. In a January 18, 2000 decision, the Office hearing representative affirmed the Office's April 13, 1999 decision.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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.<sup>1</sup> 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

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

injury sustained in the performance of duty within the meaning of the Act.<sup>2</sup> 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.<sup>3</sup>

Appellant indicated that she had been a good worker and was on good terms with her supervisor, John Coviello, until a few months prior to the October 13, 1998 incident. She commented that, for some reason, he perceived her as an unproductive worker. Appellant stated that Mr. Coviello harassed her to no end until the situation reached an emotional conclusion on October 13, 1998. She indicated that she was sorting and casing mail when Mr. Coviello came over and criticized the manner in which she was casing mail, stating that she was not holding enough mail in her hand and that he would show her how to hold the mail and case it. Appellant contended that Mr. Coviello stood next to her for the next 10 minutes, writing down what he perceived as her errors. She claimed that she told Mr. Coviello that she was feeling chest pain but he did not acknowledge the comment. Appellant indicated that she discussed the problem with her union steward and then, after failing to find the manager, came back to her supervisor and asked him to take her to the hospital to treat the chest pain. She testified that she drove herself to the hospital and was admitted for overnight observation due to her chest pain.

Appellant returned to work on November 4, 1998. She claimed that coworkers were instructed not to talk to her. Appellant indicated that on November 5, 1998, she was scheduled to leave for delivering mail at 11:45 a.m. but Mr. Coviello instructed her to continue throwing flat mail until 12:30 p.m. When she stated that she would be late getting to the street, he told her to take her lunch from 12:30 p.m. to 1:00 p.m. Appellant stated that she asked to take lunch from 1:00 to 1:30 p.m. because she had to take medication at that time that had to be taken with food. She claimed that Mr. Coviello asked her whether she was going against a direct order on when to take her lunch. At that point, appellant left the employing establishment.

Appellant submitted statements from two coworkers who overheard Mr. Coviello criticize the manner in which appellant was casing mail. One of those coworkers and two other coworkers stated that they observed appellant crying when she left the employing establishment shortly thereafter. Two coworkers stated that when they asked appellant what was wrong, she cited the pressure of the job.

Mr. Coviello stated that, in the months prior to the October 13, 1998 incident, appellant's performance had fallen below levels she had previously demonstrated. He indicated that on October 13, 1998 he observed appellant sorting mail one letter at a time. Mr. Coviello related that he approached her and spoke to her politely about this habit. He denied standing next to her for the next 10 minutes. Mr. Coviello reported that appellant never asked him to take her to the

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<sup>2</sup> *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).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

hospital. He also denied telling coworkers not to talk to appellant when she returned to work on November 4, 1998 and denied asking her whether she would disobey a direct order.

Appellant made a general allegation that her emotional condition was due to harassment by her supervisor. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.<sup>4</sup> Appellant only established that her supervisor approached her on October 13, 1998 and criticized the way she was sorting and casing mail. When a supervisor is properly exercising his supervisory duties and responsibilities, a claimant's reaction to such supervision is not compensable.<sup>5</sup> The witnesses indicated that they heard Mr. Coviello criticize the way appellant was holding and casing mail. There is no evidence that he verbally abused appellant or used offensive language in his remarks to her. Appellant has not established that coworkers were instructed not to talk to her when she returned to work on November 4, 1998 or that he accused her of wanting to disobey a direct order on November 5, 1998. She, therefore, has not established that she was exposed to a compensable factor of employment either on October 13, 1998 or November 5, 1998 and that she therefore sustained an injury in the performance of duty.

The decisions of the Office of Workers' Compensation Programs, dated January 18, 2000 and April 13, 1999, are hereby affirmed.

Dated, Washington, DC  
April 6, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> *Joan Juanita Greene*, 41 ECAB 760 (1990).

<sup>5</sup> *Janet I. Jones*, 47 ECAB 345 (1996).