

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE WATSON and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 00-2441; Submitted on the Record;
Issued August 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

On November 5, 1999 appellant, then a 51-year-old former laborer/custodian, filed an occupational disease claim alleging that he sustained stress due to factors of his federal employment. On the reverse side of the claim form, an official with the employing establishment indicated that appellant had been separated from the employing establishment effective November 21, 1994 due to his failure to keep a regular work schedule.

By decision dated March 16, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish an injury in the performance of duty. The Office found that appellant did not allege any compensable factors of employment.

In a letter dated March 27, 2000, appellant requested a review of the written record by an Office hearing representative. By decision dated July 11, 2000, the hearing representative affirmed the Office's March 16, 2000 decision.

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

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 5 U.S.C. §§ 8101-8193.

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.²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

In this case, appellant has alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered factors under the terms of the Act.

Appellant attributed his condition, in part, to officials with the employing establishment setting up a "constructive denial process" and failing to file his initial workers' compensation claim. Appellant also alleged that managers and union representatives at the employing establishment acted together and with a hostile attitude to have him separated from the employing establishment. In a letter to the Office dated December 6, 1999, appellant related that managers and union representatives "imposed undue hardship upon [him] and his family by fabricating unwarranted discipline from 1985 to 1995 and setting up a constructive denial process designed to provoke anger, stress and inflict harassment as reprisal for [his] stand against the unwarranted aggression that it imposed." Appellant also maintained that he did not have an attendance problem because he had a substantial sick leave balance when he was terminated from employment based on his failure to maintain a regular work schedule. In support of his allegations, appellant submitted copies of numerous disciplinary actions taken against him from 1992 through 1994, culminating in letter of decision removing him from employment. While the handling of disciplinary actions is generally related to employment, it is an administration function of the employer and not a duty of the employee.⁵ However, the Board has held that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁶ In this case, the record contains no evidence showing that the employing establishment erred in any of its disciplinary

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *Id.*

⁵ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁶ *Id.*

actions. While appellant filed grievances as a result of the disciplinary actions, it appears from a review of the record that the grievances were either dismissed or denied. As appellant has not submitted any evidence corroborating his allegations of error or abuse by the employing establishment in its disciplinary actions against him, he has not established a compensable factor of employment under the Act.

Appellant primarily attributed his emotional condition to harassment by management at the employing establishment. He submitted correspondence regarding grievances filed with the employing establishment, Merit Systems Protection Board, National Labor Relations Board and Equal Employment Opportunity Commission in support of his contention that he experienced harassment and a hostile work environment. Appellant also submitted copies of letters that he sent to the Office in 1990 and 1991 detailing incidents which he believed constituted harassment. In a letter to the Office dated January 26, 2000, appellant additionally contended that the employing establishment officials published false statements about him on August 6, 1996.⁷ To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors or coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁸ However, 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.⁹ While appellant has alleged that supervisors engaged in actions which he believed constituted harassment and discrimination, he has provided no corroborating evidence, such as witness statements specifically describing incidents, to establish that the statements actually were made or that the actions actually occurred.¹⁰ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant also argued that the determinations by Social Security Administration and Office of Personnel Management that he was disabled should be sufficient to establish his claim under the Act. However, the determinations of other agencies with respect to disability are not determinative of proceedings under the Act, since different issues and standards of proof are involved.¹¹

⁷ The record contains a statement dated August 6, 1996 from officials with the employing establishment indicating that appellant should not be allowed in the worksite due to his homicidal threats. Appellant, however, has not submitted any corroborating evidence which would support that this action taken by the employing establishment was unwarranted.

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹¹ *See Stephen R. Lubin*, 43 ECAB 564 (1992).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹²

The decisions of the Office of Workers' Compensation Programs dated July 11 and March 16, 2000 are affirmed.

Dated, Washington, DC
August 3, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹² As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki, supra* note 3.