

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JASPER L. BRANCH and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 00-683; Submitted on the Record;
Issued February 20, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board finds that appellant did not meet his burden of proof to establish 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 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

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 employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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.⁵ 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.⁶

In April 1998 appellant, then a 38-year-old distribution clerk, alleged that he sustained emotional and stress-related conditions as a result of a number of employment incidents and conditions.⁷ By decision dated December 29, 1998, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated and finalized August 11, 1999, an Office hearing representative affirmed the Office's December 29, 1998 decision.⁸ The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that he was harassed by his supervisors on February 15, 1998 when they failed to show proper concern and refused to allow him to go to the hospital after a liquid substance leaked from a package onto his hands.⁹ To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁰ 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.¹¹

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ Appellant stopped work on April 30, 1998 and did not return to work.

⁸ The record contains a May 7, 1999 decision in which the Office hearing representative denied appellant's request to subpoena witnesses. Appellant has not appealed this decision and the matter is not before the Board.

⁹ Appellant indicated he felt that he was treated as though he were less than human and that he was treated differently than other employees.

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

The record reveals that, after appellant reported that a liquid substance leaked from a package onto his hands, he was advised that the liquid substance was a commercial shampoo which did not present any physical harm. Statements from his supervisors indicate that appellant was shown the commercially labeled bottle from which the shampoo leaked. Moreover, he was advised that he was free to take leave in order to go to the hospital if he so wished, but that he would not be reimbursed for the hospital visit. The supervisors reported that appellant's breath smelled of alcohol and that he began to behave erratically after being counseled regarding the package.¹²

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination with regard to the February 15, 1998 incident and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹³ Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁴ He has not adequately explained how the actions of his supervisors on February 15, 1998 constituted harassment or discrimination. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.¹⁵

Appellant suggested that the employing establishment improperly issued him a disciplinary letter in late April 1998.¹⁶ Regarding his allegation that the employing establishment engaged in an improper disciplinary action, the Board finds that this allegation relates to an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.¹⁷ Although the handling of disciplinary actions is generally related to the employment, it is an administrative function of the employer and a duty of the employee.¹⁸ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the

¹² A supervisor called for security personnel but appellant left the building of his own volition before they arrived.

¹³ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁵ Appellant's attorney suggested that appellant directly developed stress due to his fear of the leaking substance and that, even if appellant's reaction was unreasonable, he sustained an exacerbation of a preexisting emotional condition as a result. However, a review of the record reveals that appellant's claim is in essence a claim that he suffered stress because he felt the employing establishment committed harassment and discrimination in handling the February 15, 1998 incident. For the above-noted reasons, appellant did not establish an employment factor in this regard.

¹⁶ Appellant was disciplined for an incident on April 25, 1998 during which he yelled at a supervisor and failed to follow instructions.

¹⁷ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁸ *Id.*

evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁹ Appellant did not submit any evidence showing that the employing establishment committed error or abuse with respect to disciplinary matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters. Regarding appellant's allegation that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.²⁰

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.²¹

The decisions of the Office of Workers' Compensation Programs dated August 11, 1999 and December 29, 1998 are affirmed.

Dated, Washington, DC
February 20, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²⁰ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

²¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).