

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARMELO P. VELASCO and U.S. POSTAL SERVICE,
POST OFFICE, City of Industry, CA

*Docket No. 00-998; Submitted on the Record;
Issued February 26, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On October 12, 1998 appellant, then a 49-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from an emotional condition due to harassment and intimidation by the postmaster. The postmaster denied that he subjected appellant to harassment and intimidation. On October 29, 1998 the employing establishment controverted the claim.

On March 16, 1999 the Office of Workers' Compensation Programs denied appellant's claim for compensation, finding that the evidence in the file was insufficient to establish an injury.

On March 25, 1999 appellant requested a hearing, which was held on August 30, 1999.

In a decision dated December 8, 1999, the hearing representative affirmed the decision of the Office, finding that appellant had failed to establish any compensable factors of employment.

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

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 factors of his federal employment.¹² To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual

¹ *Edward C. Heinz*, 51 ECAB ____ (Docket No. 99-992, issued September 12, 2000).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.

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 of coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's claim because it found that appellant failed to establish any compensable work factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that he was denied time off and that his supervisor would require him to submit doctor's notes for sick days, the Board finds that these allegations relate to administrative or personnel matters at the employing establishment, which generally are not covered under the Act in the absence of error or abuse by the employing establishment.⁴ Appellant has shown no error or abuse in the employment establishment's discussions with him on this regard.⁵

Appellant's complaints about an unequal assignment of the case load and that the postmaster made him deliver an express mail that another employee refused to deliver despite the fact that appellant was also busy, amount to objections to work assignments made by the employing establishment. Appellant also objected to the postmaster observing him throw flats and forcing him to go to a meeting. Although the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶ Assignment of work is an administrative or personnel matter of the employing establishment and coverage can only be afforded where there

³ *Ernest St. Pierre*, 51 ECAB ____ (2000); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁵ *Jimmy Gilbreath*, 44 ECAB 555 (1993).

⁶ *Janet I. Jones*, 47 ECAB 345, 347 (1996).

is a showing of error or abuse, which has not been shown in this case.⁷ In the same light, appellant's complaints about operating the new vending machine amount to a complaint about a work assignment, which, absent a showing of abuse, would not qualify as a compensable factor. There is no evidence of abuse, in fact, when appellant objected to handling the new vending machine, the employing establishment made arrangements for another person to do this work. Furthermore, even if training on this machine was insufficient, error or abuse would have to be shown, and there is no evidence of such.⁸ Appellant's allegation that he was forced to work with one functioning hand against his doctor's instructions, if proven, could be compensable.⁹ However, appellant has submitted no corroborating evidence that this occurred.

Appellant alleged that the supervisor harassed him; that he was frustrated by the way the postmaster treated him; and that the postmaster lied and used intimidating tactics. 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 In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisor.¹² Appellant alleged that his 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.¹³ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's remaining allegations, he has submitted insufficient evidence to establish that the postmaster yelled at him when he did not get a signature on an express mail slip; that the postmaster placed him under unreasonable time constraints for delivering mail; that there were frequent yelling matches between the supervisor and other employees; that appellant was told to throw away refund requests made by customers for the vending machine; that appellant was pushed by the postmaster; and that appellant had to buy the postmaster food.

⁷ *Alice M. Washington*, 46 ECAB 382 (1994).

⁸ *Ernest St. Pierre*, *supra* note 3.

⁹ *Carolyn R. Banks*, 47 ECAB 449 (1996).

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).

¹² *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).

¹³ *See William P. George*, 43 ECAB 1159, 1167 (1992).

There is some evidence of a problem arising when a book of stamps was turned in that may have been left on the top of a vending machine by appellant. The book of stamps was returned by another employee, and appellant got very upset, saying that he wanted an accounting. However, there is no evidence that the employing establishment acted improperly with regard to this situation.

For the foregoing reason, 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.¹⁴

The decisions of the Office of Workers' Compensation Programs dated December 8 and March 16, 1999 are affirmed.

Dated, Washington, DC
February 26, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁴ 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).