

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT B. CASCIO and U.S. POSTAL SERVICE,
POST OFFICE, Bradenton, FL

*Docket No. 99-1830; Submitted on the Record;
Issued February 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On May 28, 1997 appellant, then a 47-year-old supervisor of customer services, filed a claim for "stress aggravated by continued harassment." He provided a statement on the factors to which he attributed his condition, statements from coworkers, his May 3, 1997 response to a letter of warning and a medical report from Terry S. Proeger, Ph.D., a clinical psychologist, regarding examinations of appellant from April 17 to May 14, 1997.

By decision dated August 20, 1997, the Office of Workers' Compensation Programs found that appellant had not cited any specific events that were considered to have occurred in the performance of duty. Appellant requested a hearing, which was held before an Office hearing representative on June 3, 1998. He testified at this hearing and presented the testimony of two witnesses. The employing establishment responded to the testimony presented at the hearing. By decision dated January 27, 1999, an Office hearing representative found that appellant had failed to prove he was harassed and mistreated, and that the incidents and conditions that he cited were administrative matters, in which appellant had not shown error or abuse.

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 work duties or to 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 a reduction-in-force or his frustration from not being permitted

to work in a particular environment or to hold a particular position.¹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.²

Most of the specific incidents to which appellant attributed his emotional condition are considered administrative or personnel matters of the employing establishment. These include the assignment of appellant's work³ and his work schedule,⁴ the monitoring of appellant's work activities,⁵ and the employing establishment's disciplinary actions, including the April 22, 1997 letter of warning and the April 16, 1997 investigative meeting. The dispute about the use of the radio on the workroom floor also involved an administrative action, as appellant's supervisor stated that it was the postmaster's policy to allow a radio if it was on a specific station, but that appellant would not require that it be tuned to that station, which resulted in complaints to appellant's supervisor, who then told appellant to turn the radio off. Appellant has alleged error or abuse in all these administrative actions, but has not provided substantiation of such error or abuse in any of them. The denials by the employing establishment of appellant's requests for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his work duties, but rather constitute appellant's desire to work in a different position.⁶ Appellant filed Equal Employment Opportunity claims regarding these and other incidents, but subsequently dropped these claims in a settlement in which the employing establishment would support his application for disability retirement.

Appellant also attributed his condition to harassment by his supervisor and the employing establishment's postmaster. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. 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 alone of harassment or discrimination are not compensable under the Act.⁷ Appellant has not proven any episodes of harassment and Dr. Proeger suggested in his initial report that appellant may be experiencing paranoid delusions. His supervisor denied that she had yelled at appellant and the statements appellant submitted from coworkers were general in nature and did not address specific incidents.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

³ *James W. Griffin*, 45 ECAB 774 (1994).

⁴ *Alice M. Washington*, 46 ECAB 382 (1994).

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

⁶ *Donald W. Bottles*, 40 ECAB 349 (1988).

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

As appellant has not cited and substantiated⁸ any compensable factors, the Office properly denied his claim without reviewing the medical evidence.⁹

The decision of the Office of Workers' Compensation Programs dated January 27, 1999 is affirmed.

Dated, Washington, DC
February 9, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ Where appellant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence. *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).