

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. STRAYER and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

*Docket No. 00-2172; Submitted on the Record;
Issued June 13, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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

On September 21, 1999 appellant, then a 43-year-old letter carrier, filed a notice of traumatic injury claiming that he suffered from mental stress and anxiety after he heard the voice of his former supervisor, Gurjant Singh Khosa, on August 6, 1999. Appellant had a prior claim accepted for anxiety related to an incident on January 28, 1999 with Mr. Khosa. Appellant was off work from January 29 until May 15, 1999. On the recommendation of his treating physician, appellant did not have to work in the same facility as Mr. Khosa.

In the statement attached to his September 21, 1999 claim form appellant related that he was working in a cubicle and thought he heard Mr. Khosa's voice. When appellant looked over the cubicle partition, he saw Mr. Khosa standing in a hallway. Appellant describes feeling panic but he did not leave the cubicle until the end of his workday for fear of running into Mr. Khosa. Once he was at home, he alleges that he broke down and was unable to go to work on the following Monday.

In an October 7, 1999 letter, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish his claim.

In a decision dated November 15, 1999, the Office denied the claim on the grounds that appellant failed to establish an injury while in the performance of duty.

On January 8, 2000 appellant requested reconsideration. Appellant submitted a December 9, 1999 medical report from his treating physician, Dr. Sally Kroner, indicating that appellant's belief that he was in close proximity to Mr. Khosa caused a dissociative episode to occur based on appellant's "previous history of significant conflict with his supervisor" and appellant's fear of him.

In a letter dated February 4, 2000, Mr. Khosa stated that he had attended a meeting on August 6, 1999. He noted: "In order to get to the meeting room, I had to walk through the hallway where [appellant] might have been working. I had no knowledge of [appellant's] latest occupation. I was not aware [that] [appellant] was in the facility that day. I did not encounter [appellant] while attending the meeting."

In a decision dated March 1, 2000, the Office denied modification following a merit review.

The Board finds that appellant has failed to establish that he sustained an emotional condition while in the performance of duty on August 6, 1999.¹

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his employment.² This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition for which he claims compensation.³ This burden also includes the submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of appellant, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of his federal employment.⁴

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where 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 coverage of the Federal Employees' Compensation Act.⁵

In this case, appellant alleges that he experienced a panic attack when he heard the voice of a prior supervisor, Mr. Khosa, while he was listening to training tapes. Appellant was disturbed by Mr. Khosa's voice because he had been sarcastic to appellant on a prior occasion

¹ The Office properly noted that appellant had a prior claim, which was accepted for harassment by appellant's supervisor. Because the facts of the prior claim were considered, the Office was not required to combine the claims.

² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

³ *See generally* 20 C.F.R. §§ 10.115-16 (1999).

⁴ *See Ruth C. Borden*, 43 ECAB 146 (1991).

⁵ 5 U.S.C. §§ 8101-8193.; *Lillian Cutler*, 28 ECAB 125 (1976).

and appellant was under a medical advisory to avoid contact with the man to prevent an aggravation of his stress disorder.

Although appellant may have heard the supervisor's voice, a statement from Mr. Khosa indicated that he did not see or speak to appellant, and was in fact unaware that appellant was working in the building where he was required to attend a meeting. There is no evidence that the employing establishment intended to bring appellant in contact with Mr. Khosa. Therefore, appellant has not established error or abuse on the part of the employing establishment in the administration of personnel matters such as requiring that appellant undergo training and that Mr. Khosa attend a meeting in the same building.

Furthermore, because there is no factual evidence of harassment, the Board finds that appellant has failed to establish a compensable factor of employment. Mere perceptions or feelings alone are not compensable under the Federal Employees' Compensation Act.⁶ To establish entitlement to benefits, a claimant must demonstrate a factual basis for the claim by supporting his allegations with probative and reliable evidence.⁷ The record in this case is devoid of such evidence.

The decision of the Office of Workers' Compensation Programs dated March 1, 2000 is hereby affirmed.

Dated, Washington, DC
June 13, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ *Frank A. Capatano*, 46 ECAB 662 (1995); *Martha L. Watson*, 46 ECAB 624 (1995).

⁷ *Mary A. Sisneros*, 46 ECAB 155 (1994).