

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK REGENNITTER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Salt Lake City, UT

*Docket No. 00-2140; Submitted on the Record;
Issued May 29, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

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

On September 20, 1999 appellant, then a 54-year-old building equipment mechanic, filed a claim for a recurrence of disability. He indicated that his original injury occurred on January 20, 1999 and the recurrence of disability began on June 10, 1999. Appellant stated that continual harassment by management caused headaches, stress, abdominal pain, diarrhea, anxiety and depression.

On September 23, 1999 appellant filed a claim for an emotional condition. He noted that a prior claim had been denied and a subsequent claim, for a January 20, 1999 incident, had been accepted.

In a March 31, 2000 letter, the Office of Workers' Compensation Programs informed appellant that the claim he had filed for a recurrence of disability as of June 10, 1999 would be considered separately as a new injury. On April 11, 2000 appellant filed another claim for a March 31, 2000 incident, alleging that his supervisor engaged in a verbal assault for no apparent reason. He stated that he had lower abdominal pains, chest pains, diarrhea, anxiety, depression and panic disorder. Appellant stopped working on March 31, 2000 and returned to work on April 11, 2000.

In a May 23, 2000 decision, the Office rejected appellant's claim for incidents occurring on or after June 10, 1999 on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty.

The Board finds that appellant did not sustain an emotional condition in the performance of duty.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant made a general allegation that his emotional condition was due to harassment by his supervisors. The actions of a supervisor, which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁴

This case centers on two incidents between appellant and his supervisor, which occurred on July 2, 1999 and March 31, 2000. In the July 2, 1999 incident, appellant was working in a limited-duty assignment, repairing torn mail. He stated that he left his desk at approximately 1:10 p.m. to go to the restroom and then take a break. Appellant's supervisor, Roland Austin was informed that appellant was away from his work area. Mr. Austin paged appellant over the employing establishment's intercom system and ordered him to report to his office.

Appellant alleged that he completed his break and reported to Mr. Austin's office at approximately 1:25 p.m. He instructed appellant to sit down but appellant refused repeatedly,

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

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Joan Juanita Greene*, 41 ECAB 760 (1990).

even after his supervisor told him to shut up and sit down. Appellant indicated it was clean up time but Mr. Austin responded that he knew what time it was. He stated that he had a headache and was feeling stressed so he was going home sick. Appellant walked out of Mr. Austin's office. Mr. Austin followed, yelling at appellant not to clock out. Appellant clocked out at 1:28 p.m., noting that his shift ended at 1:30 p.m. Mr. Austin told appellant he should not have clocked out and followed appellant toward the employing establishment's parking lot. Appellant stated that he told Mr. Austin that he was tired of being harassed and badgered and resented Mr. Austin's incriminating tone every time he addressed appellant.

In a July 6, 1999 memorandum, Mr. Austin instructed appellant that his work hours were from 5:00 a.m. to 1:30 p.m. with breaks at 7:00 a.m. to 7:15 a.m. and 11:00 a.m. to 11:15 a.m. and lunch at 9:00 p.m. to 9:50 p.m. He stated that appellant's schedule was not to be changed without notification or prior approval. On July 29, 1999 appellant received a notice that he would be suspended for seven days for failure to follow instructions during the July 2, 1999 incident.

While a verbal altercation can give rise to compensable factors of employment, not every statement uttered in the employing establishment will give rise to coverage under the Act.⁵ The July 2, 1999 incident arose from an effort to determine whether appellant had left his duty station inappropriately and not in accordance with his work schedule. The incident therefore did not involve appellant's performance of his assigned duties but an administrative matter involving the rules of the employing establishment. The incident developed into an argument between appellant and his supervisor in which appellant refused to follow his supervisor's preliminary instructions and walked out of his office. There is no evidence that Mr. Austin harassed appellant in yelling at him while he walked to clock out against the instructions of his supervisor who wanted to address an administrative issue. Because the incident involved an administrative matter and not appellant's assigned duties, and appellant did not establish that he was harassed in this incident, and the July 2, 1999 exchange between appellant and his supervisor is not a compensable factor of employment.

In the March 31, 2000 incident, appellant alleged that Mr. Austin assigned him a work order to inspect and repair a boiler. Mr. Austin stated that a coworker had reset the boiler and checked it the night before but he wanted it checked again. When appellant asked why it had not been repaired, Mr. Austin responded that the coworker had not had time to do the repairs and the matter was not that important.

Appellant asked the coworker why the repairs had not been done and received an explanation. He returned to Mr. Austin's office to ask when the coworker was assigned the boiler work on the previous day. Appellant found the coworker arguing with Mr. Austin but the coworker then left. He asked his question to which Mr. Austin responded with a question on why appellant had talked to the coworker. Appellant noted that the coworker had complained that appellant was trying to get him in trouble for not fixing the boiler.

Appellant answered that the coworker had a tendency to embellish his stories and then told Mr. Austin that he did not appreciate his accusatory and condescending tone. He alleged

⁵ *Mary A. Sisneros*, 46 ECAB 155 (1994).

that Mr. Austin's voice became louder as he asked appellant whether he had a problem with one of his coworkers. Appellant indicated that he said no and walked out. He related that Mr. Austin called him back into his office, and repeated his question in a loud voice. Appellant responded, telling Mr. Austin not to speak to him in a condescending manner and walked away again. Appellant then sought medical leave because of stress. He stated that a physician instructed him not to return to work until April 10, 2000.

The March 31, 2000 incident also involved a verbal exchange between appellant and his supervisor over why a coworker had not repaired a boiler the previous day. The argument therefore did not arise from appellant's assigned duties but from a coworker's failure to perform his assigned duties. Although appellant and his supervisor raised their voices in the argument, there is no indication that the supervisor engaged in harassment of appellant. This incident did not involve appellant's performance of his assigned duties and there is no evidence of error or abuse by the employing establishment. The March 31, 2000 incident is not a compensable factor of employment.

The decision of the Office of Workers' Compensation Programs dated May 23, 2000 is hereby affirmed.

Dated, Washington, DC
May 29, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member