

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN R. BENNEFIELD and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 00-2250; Submitted on the Record;
Issued May 25, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his employment.

On December 1, 1998 appellant, then a 37-year-old part-time flexible mailhandler, filed a claim for an emotional condition which he attributed to "the pressure of the people on the job and supervisor ... up to the last day of employment."¹

In a memorandum dated December 25, 1998, appellant's supervisor stated that casual employees, such as appellant, were required to work overtime whenever they were needed but that appellant refused to work overtime. He stated that appellant was advised that he would be terminated for failure to follow instructions if he did not perform the required overtime.

By decision dated January 19, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had failed to establish that he had sustained an emotional condition causally related to factors of his employment.

In an undated letter received by the Office on January 29, 1999, appellant requested reconsideration and submitted additional evidence. He alleged that his emotional condition was caused by harassment from coworkers and supervisors. He did not cite any specific incidents or situations of harassment. Appellant also submitted medical evidence.

By decision dated March 10, 1999, the Office denied modification of its January 19, 1999 decision on the grounds that the evidence of record failed to establish that appellant sustained an emotional condition causally related to factors of his employment.

¹ The record shows that appellant was terminated on September 18, 1998.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty causally related to factors of his employment.

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.² 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.³

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.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

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.⁶ 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.⁷

In this case, appellant alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to an employment-related stress condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁶ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

⁷ *Id.*

regular duties, these could constitute employment factors.⁸ 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.⁹ In this 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 supervisors or coworkers.¹⁰ Appellant generally alleged that he was harassed by his supervisors and coworkers but he did not describe any specific incidents or acts of harassment. As noted above, appellant's supervisor indicated that appellant was terminated because he refused to work required overtime hours. There is no evidence of record to support appellant's allegation of harassment by the employing establishment. Thus, appellant has not established a compensable employment factor under the Act in this respect.¹¹

The March 10 and January 19, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
May 25, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *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).

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 6.