

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CLAUDE C. FRANCIS, JR. and U.S. POSTAL SERVICE,  
WATSON COMMUNITY STATION, Arlington, TX

*Docket No. 00-76; Submitted on the Record;  
Issued October 5, 2001*

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DECISION and ORDER

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

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

On February 23, 1997 appellant, then a 49-year-old manager of customer services, filed a claim for "depression, stress, high blood pressure, anxiety [and] blood disorder."

By decision dated January 9, 1998, the Office of Workers' Compensation Programs found that the evidence failed to demonstrate that the claimed injury occurred in the performance of duty.

By letter dated January 21, 1998, appellant requested a review of the written record and submitted a January 20, 1998 statement describing the incidents and conditions of his employment to which he attributed his conditions.

By decision dated May 7, 1998, an Office hearing representative found that appellant had not cited any compensable employment factors, shown any error or abuse in the employing establishment's implementation of administration functions, or submitted rationalized medical evidence of causal relation.

By letter dated May 26, 1998, appellant requested reconsideration, stating that his Equal Employment Opportunity (EEO) complaints had still not been investigated more than one year after they were filed, and that he had not received a response to his appeal of the denial of an incentive award payment.

By decision dated July 8, 1998, the Office found that appellant had not shown error or abuse by the employing establishment, that he had not substantiated his allegations of harassment, and that, as he had not cited and substantiated any compensable employment factors, it was unnecessary to review the medical evidence.

By letter dated July 2, 1999, appellant requested reconsideration.

By decision dated August 19, 1999, the Office found a continued absence of compensable factors, incidents or occurrences to support an injury in the performance of duty.

The Board finds that appellant has not established that he sustained hypertension or an emotional condition in the performance of duty.

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.<sup>1</sup>

Most of the factors to which appellant attributed his emotional condition and his high blood pressure involved administrative or personnel actions by the employing establishment. 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.<sup>2</sup>

Appellant has not shown error in the employing establishment's denials of his requests for leave around Thanksgiving and Christmas of 1996.<sup>3</sup> The employing establishment disapproved appellant's requests for this leave, which were filed on November 18 and December 13, 1996, on the basis of a shortage of supervisory personnel. No error was shown in the employing establishment's December 10, 1997 denial of administrative leave pending disability retirement; the December 10, 1997 letter points out that granting this leave would not be in the best interest of the employing establishment, as there was no guarantee disability retirement would be granted and no justification of giving appellant a month's pay for no apparent reason.

Appellant also has not shown error or abuse in the employing establishment's requesting further documentation for his continued absence from work or in requiring that he receive medical clearance by its medical unit before he could return to work. He filed EEO complaints regarding these administrative or personnel matters, and these complaints were settled. In a February 23, 1999 settlement, appellant received \$100.00 for documentation, mileage and time spent in obtaining medical documentation, and, in an August 6, 1997 settlement, recrediting of three days of annual leave used while the employing establishment's doctor was unavailable to

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>3</sup> Granting or denying leave is an administrative or personnel matter. *Jimmy Gilbreath*, 44 ECAB 555 (1993).

perform a fitness-for-duty examination. Such settlement agreements generally do not establish error by the employing establishment, even if they result in a monetary payment to appellant.<sup>4</sup>

Appellant has not established that the employing establishment erred in its denial of an incentive award program payment. The denial of an incentive award to appellant was based on an evaluation of his performance, which was found deficient with regard to contribution, safety and productivity. Assessments of performance and denial of pay increases related to such assessments are not covered under the Act in the absence of a showing of error or abuse,<sup>5</sup> and appellant has not shown that the employing establishment erred in evaluating his performance in fiscal year 1997. Appellant's disagreement with the employing establishment's productivity goals for his station is not compensable under the Act, in the absence of a showing that the goals were unreasonable.<sup>6</sup>

Appellant has also alleged, but not proven, that the employing establishment wrongfully refused to transfer him to other positions.<sup>7</sup> He has shown that other postal service employees received noncompetitive lateral transfers and that he had to competitively bid on the lateral or downgraded positions to which he sought transfers. This, however, does not establish error or abuse on the part of the employing establishment, given the discretionary language of the employing establishment's noncompetitive selection procedures and appellant's refusal of positions offered noncompetitively by the employing establishment.

Appellant also cited factors of employment that are not administrative or personnel actions. He alleged that his supervisor violated his privacy by telling all his peers about his psychiatric condition and his EEO complaints, and by telling the entire staff that he was sent for a psychiatric evaluation. Appellant, however, has not submitted any evidence substantiating these allegations.<sup>8</sup> He also cited an incident in which the postmaster kicked him out of his office, slammed the door and said he was "really pissed." While the Board has recognized the compensability of verbal altercations or abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>9</sup> Appellant has not explained how such an isolated comment would rise to the level of harassment or verbal abuse.<sup>10</sup>

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<sup>4</sup> *Georgia M. McCardle*, 48 ECAB 502 (1997).

<sup>5</sup> *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>6</sup> *Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>7</sup> Denials of transfers are not covered under the Act in the absence of a showing of error or abuse. *James W. Griffin*, 45 ECAB 774 (1994).

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

<sup>9</sup> *Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>10</sup> *Christophe Jolicoeur*, 49 ECAB 553 (1998).

In summary, appellant has not cited and substantiated any compensable employment factors as the cause of his emotional condition or hypertension. For this reason, he has not met his burden of proof to establish his claim.

The decision of the Office of Workers' Compensation Programs dated August 19, 1999 is affirmed.

Dated, Washington, DC  
October 5, 2001

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member