

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLEN DONELAN and U.S. POSTAL SERVICE,
MIAMI PROCESSING & DISTRIBUTION CENTER, Miami, FL

*Docket No. 01-650; Submitted on the Record;
Issued October 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On October 22, 1999 appellant, then a 63-year-old industrial engineer, filed a claim for stress, anxiety, depression and traumatic decomposition. He contended that the threat of job loss through removal or firing had caused a chronic emotional condition to recur. Appellant noted that he had subsequently taken sick leave. He stopped working on October 15, 1999. Appellant submitted documents indicating that the employing establishment ordered him to move his office from the airport mail center to the Miami processing and distribution center, despite appellant's contention that the ordered move violated a May 19, 1993 settlement agreement with the employing establishment.

Appellant submitted an October 4, 1999 report from Dr. John A. Mekras who stated that appellant had suffered from ciguatera¹ since 1991. He indicated that the condition was a chronic, debilitating illness that had waxing and waning symptoms, including neurologic deficits with periods of intermittent fatigue, especially associated with stress. Dr. Mekras noted that appellant's anxiety, depression and stress, created by the death of his son one year prior and his continuing job-related stressful conditions medically warranted time off from work.

In a December 20, 1999 decision, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate that appellant sustained an injury in the performance of duty.

Appellant requested a hearing before an Office hearing representative. At the June 28, 2000 hearing, appellant alleged that in 1991 he developed a severe case of ciguatera poisoning while on the job. He noted that stress could cause the condition to recur. Appellant also noted

¹ A form of fish poisoning; *see Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

that he was an officer in the local branch of the National Association of Postal Supervisors. He testified that he had successfully represented many members of the association in disciplinary hearings. Appellant related that his son died on September 13, 1998. He claimed that after he returned to work following the death of his son, the employing establishment subjected him to continual harassment. Appellant stated that, on one occasion, he was defending three people who were meeting him in his office at the employing establishment when postal inspectors appeared and escorted his visitors off the premises. He also noted that he had an exchange of electronic mail messages (email) with a supervisor who related that appellant had been seen with a member of the association with the assumption that he would be representing the person. The supervisor indicated that appellant was required to give 72 hours notice that he was going to be a representative in a disciplinary matter. Appellant responded that the information was inaccurate and told the supervisor to stop wasting his time with that type of message. Appellant contended that the order to move his office was in retaliation for his success in representing members of the association.

In a September 29, 2000 decision, the Office hearing representative found that appellant had failed to submit corroborating evidence that he was harassed by the employing establishment. He indicated that the incidents involving appellant's representation of association members in disciplinary hearings were administrative functions relating to union business and, therefore, were not compensable factors of employment. He stated that appellant had not shown that the actions of the employing establishment were in error or abusive. The hearing representative, therefore, affirmed the Office's December 20, 1999 decision.

The Board finds that appellant has not established that he sustained an injury 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.² 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.³ 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

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *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).

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.⁴

Appellant's primary claim is that the employing establishment violated a settlement agreement by requiring him to move from the airport mail center to the processing and distribution center. The location of a claimant's office is an administrative matter unrelated to appellant's assigned duties and, therefore, would not be a compensable factor of employment unless the employing establishment acted in error or abusively. In claiming that the move violated a settlement agreement, appellant contended that the employing establishment's action was in error and abusive. The settlement agreement provides that appellant would be provided a position as a senior industrial engineer at a grade of EAS 21 in Miami, Florida in processing and distribution. The agreement did not contain any specific provision on where appellant's office would be located other than to indicate that it would be in Miami, Florida.

Appellant's attorney submitted a statement from Alan S. Barne, an employing establishment official, who indicated that he had acted as an intermediary between appellant and Don Spatola, then the area manager for the employing establishment. Mr. Barne stated that there was a verbal agreement between appellant and Mr. Spatola that appellant's office would remain at the airport mail center. Mr. Barne indicated that the language was not included in the settlement agreement because revising the agreement would delay the signing of the agreement by both parties. In a September 24, 1999 statement, Mr. Spatola stated that, at the time of the settlement agreement, there was no industrial engineer at the airport mail center nor the workload to justify one. He indicated that an industrial engineer position was created at the processing and distribution center in compliance with the settlement agreement, which could be detailed to the airport mail facility pending workload justification. He contended that he never intended to agree in the settlement that the industrial engineer position would be permanently assigned to the airport mail facility.

The settlement agreement, on its face, did not require that appellant's office remain at the airport mail facility. There is contradictory evidence on whether there was a verbal agreement that appellant's office would be permanently located at the airport mail facility. Appellant, however, has not established that the agreement required that he remain at the airport mail facility permanently, without be subject to moving. Appellant, therefore, has not established that the employing establishment, in requiring him to move his office to the processing and distribution center, took an action that was erroneous or abusive.

Appellant made a general claim that the employing establishment engaged in harassment because of his activity in defending coworkers in disciplinary actions. 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

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

allegations that the claimed emotional condition was caused by factors of employment.⁵ In this case, the employing establishment explained to appellant that his office was being moved because the workload at the processing and distribution center required his presence and expertise and the bulk of his workload would be at the processing and distribution center. Appellant has not presented any evidence that the intent of the employing establishment in moving him was to harass or punish him. He has only presented speculation on the motives of the employing establishment. Therefore, there is insufficient evidence to establish that the employing establishment, in requiring appellant to move his office, was engaged in harassment and, therefore, was committing error and abuse in conducting an administrative action.

Appellant contended that the employing establishment acted improperly while he was dealing with union matters, such as seeing three people he was representing when they were ordered off the employing establishment premises, or being questioned about a conversation with a person who was facing disciplinary action. Matters pertaining to union activities are not deemed employment factors.⁶ There is no evidence that the employing establishment, in taking the actions it did in regard to appellant's union activities, erred or acted abusively. The evidence shows that the employing establishment had placed the three postal employees off duty while they were under investigation. The employing establishment, therefore, was acting within its authority in ordering the employees to leave the employing establishment premises. There is no evidence that the employing establishment acted improperly in asking appellant, after a conversation with a postal employee facing disciplinary action, whether he would be representing that person. Appellant, therefore, has not shown that the actions of the employing establishment in relation to his union activities were taken in error or were abusive. Furthermore, he has not established that the employing establishment's actions in requiring him to move his office were taken in retaliation for his union activities. Appellant has not established any compensable factors of employment and, therefore, has not established that he sustained an injury in the performance of duty.

⁵ *Joan Juanita Greene*, 41 ECAB 760 (1990).

⁶ *Diana M. Ramirez*, 48 ECAB 308 (1997).

The decision of the Office of Workers' Compensation Programs, dated September 29, 2000, is hereby affirmed.

Dated, Washington, DC
October 26, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member