

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEONNE B. JONES and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 01-658; Submitted on the Record;
Issued October 10, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On December 28, 1999 appellant, then a 38-year-old mail processor, filed a claim for an emotional condition. She stated that, on August 27, 1999, a division of the employing establishment requested the assignment of people from appellant's section because it was shorthanded. She indicated that a coworker requested information on how people would be selected to go to the other section. Appellant alleged that, when the coworker received the information, she began shouting and cursing at appellant. Appellant felt the coworker created a hostile environment.

In a January 10, 2000 note, an acting supervisor who witnessed the dispute stated that, after an explanation on how workers would be rotated to the other division, appellant had difficulty understanding the explanation and the coworker attempted to explain it to her. The supervisor indicated that appellant complained to the coworker and stated that the coworker should rotate to the other division before she did. Appellant threatened to sign out if she was rotated into the other division. The supervisor related that she took the coworker to calm her down and sent her back to work. She indicated that appellant continued to argue with the coworker and other supervisors were called in to talk with the coworker. The acting supervisor reported that the argument did not continue into the next day.

In an undated note, the coworker stated that, when the rotation system was explained, she, appellant and another coworker complained that they were the only employees sent out of their unit. The coworker asked how much seniority was needed for the rotation as she had seniority over appellant. She noted that appellant threatened to sign out rather than be rotated to the other division. She stated to appellant that she had seen appellant sleeping between postal carts and noticed that appellant would leave her machine and disappear for long periods. The coworker reported that appellant then began fussing and cursing at her. The coworker indicated that she reported the problem to supervisors and one supervisor took her aside to talk to her and

suggested that she ignore appellant. The coworker indicated that the argument did not last beyond that shift.

In a March 16, 2000 decision, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that she had failed to establish that she sustained an injury as alleged.

In an April 4, 2000 letter, appellant requested a hearing before an Office hearing representative. At the September 26, 2000 hearing, appellant contended that her supervisors, particularly the Director of Operations, Aubry Watson, stated to other employees that appellant was the cause of the August 27, 1999 dispute and gave her a reputation as a troublemaker. She testified that Mr. Watson had constantly made false statements to her and about her. She noted that she had previously filed a claim for stress which she related to harassment from Mr. Watson.¹ Appellant contended that the August 27, 1999 incident had aggravated a preexisting adjustment disorder and rendered her unable to work.

In an October 21, 2000 note, Mr. Watson denied that he had ever screamed or yelled at appellant or any other employee. He stated that he made no accusation against appellant but only investigated a verbal dispute reported to him. He commented that both appellant and the coworker were engaged in unprofessional conduct.

In a November 21, 2000 decision, the Office hearing representative found that there was no evidence that the coworker or appellant's supervisors caused a hostile work environment in the August 27, 1999 incident. He therefore concluded that appellant had not established that she sustained an injury in the performance of duty. He affirmed the Office's March 16, 2000 decision.

The Board finds that appellant has not established that she 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,

¹ The Board notes that the Office, in a June 21, 1994 decision, denied appellant's claim for an emotional condition on the grounds that evidence of record failed to demonstrate that her claimed injury occurred in the performance of duty. The Office specifically found that appellant had failed to establish that she had been harassed or subjected to discrimination. There is no indication that appellant appealed from this prior decision.

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

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 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 contended that she developed an emotional condition due to verbal harassment by a coworker. She further claimed that a supervisor disparaged her to other coworkers. The statements from the coworker and the acting supervisor, however, indicated that appellant was in an argument, and engaged in cursing her coworker. Appellant's supervisor, Mr. Watson, denied that he accused appellant of any improper conduct. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁵ In this case, the evidence does not establish verbal harassment by appellant's supervisor or coworker. The verbal dispute between appellant and her coworker therefore was not a compensable factor of employment. While appellant claimed that her supervisor was accusing her of starting the argument, she has not submitted sufficient evidence in support of her claim. She has not submitted statements from witnesses that substantiate her allegations that her supervisor was making accusatory statements about her to her coworkers. Appellant therefore has not established that she sustained an injury in the performance of duty.

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).

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

⁵ *Christophe Jolicoeur*, 49 ECAB 553 (1998).

The decisions of the Office of Workers' Compensation Programs, dated November 21 and March 16, 2000, are hereby affirmed.

Dated, Washington, DC
October 10, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member