

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REGINO V. ABAYA and U.S. POSTAL SERVICE,
NORTH OAKLAND STATION, Oakland, CA

*Docket No. 01-493; Submitted on the Record;
Issued September 17, 2001*

DECISION and ORDER

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

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

On August 30, 2000 appellant, then a 46-year-old letter carrier, filed a claim for high blood pressure due to stress. He stated that on August 10, 2000 his supervisor took him into her office and raised her voice, insulted his work performance and would not allow him to explain. Appellant indicated that she prevented him from seeing his union steward, threatened his job and refused to provide him a form to leave work.

In an accompanying statement, appellant indicated that on July 24, 2000 his supervisor informed him that a postal customer on his route on the prior Saturday, July 22, 2000, called to complain that she had not received her paycheck, although it should have been delivered. Appellant responded that it was impossible for him to have misdelivered the mail. On August 8, 2000 his supervisor informed him that the customer had finally received her check after the landlord opened the neighboring empty apartment and found the check there. Appellant's supervisor insisted that he call the customer to apologize but he refused. He stated that there was no empty apartment adjacent to the apartment of the complaining customer.

Appellant informed his supervisor that the only basis for accusing him of misdelivering the mail was the customer's contention that she should have received the check on the day that appellant delivered on that route. He stated that, even if, the check had been misdelivered, there was no incontrovertible proof that it happened on the day he delivered mail to the area.

Appellant related that he talked to a shop steward who indicated that she would come to the employing establishment to discuss the matter with the supervisor. He stated that on August 10, 2000 the supervisor met with the shop steward but ordered her off the employing establishment premises. Appellant indicated that the supervisor then ordered him into her office and subjected him to verbal abuse. He responded that he was not feeling well, stated that the conversation was not going anywhere and asked for a leave form. Appellant stated that the supervisor refused his request for a leave form.

In an August 30, 2000 statement, appellant's supervisor reported that on July 31, 2000, she received a telephone call from a customer who complained that she had not received a check that she received every Saturday. The customer stated that she heard the postal carrier put mail in the slot of the apartment next door as well as her apartment, even though the neighboring apartment was vacant. The supervisor indicated that the customer called again on August 3, 2000 to state that she had still not received the check. The supervisor reported that appellant stated that he was absolutely sure he had not misdelivered the mail.

On August 8, 2000 the customer informed the supervisor that the owner of the apartment had opened the vacant apartment and found the customer's check. The supervisor stated that she put appellant on the telephone to apologize to the customer. She then gave him an official discussion for misdelivery of the mail. The supervisor reported that on August 10, 2000, she met with the shop steward who indicated that she wanted to meet with appellant but refused to say why. The supervisor stated that the shop steward "blew up" and therefore was ordered off the employing establishment premises. She then asked appellant to come to her office. Appellant affirmed that he had requested the steward to come for the official discussion. The supervisor indicated that an official discussion was only between the supervisor and the employee.

Appellant added that he had also called her to discuss the supervisor's instructions on sorting and casing the mail. He stated that following her instructions would require an additional hour of work. The supervisor responded that her instructions were the proper way to do the job. The supervisor reported that appellant then began talking loudly, stating that he was a sick man and that he was going to a doctor because his chest hurt. The supervisor indicated that appellant continued yelling as he was leaving the employing establishment, disrupting the employing establishment until he clocked out and left. She stated that appellant never asked for a leave form. The supervisor submitted statements from two witnesses who reported that they heard appellant yelling, accusing the supervisor of attempting to foul up people's lives.

In a November 16, 2000 decision, the Office denied appellant's claim on the grounds that the evidence of record did not establish that appellant's claimed condition arose out of 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

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

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

In this case, appellant claimed that his supervisor verbally abused him. The evidence of record, however, does not support appellant's contention that he was verbally abused. The record shows that he argued with his supervisor on a matter of misdelivery of mail and his supervisor's subsequent official discussion was a form of disciplinary action. Such disciplinary actions are administrative and therefore are not considered to be compensable factors of employment unless there is evidence of error or abuse on the part of the supervisor.⁴

Appellant claimed that there was no evidence that he had misdelivered the mail in question. However, the more credible evidence of record shows that a postal customer's expected check was delivered to a vacant apartment on the day that appellant was delivering mail on that route. Appellant contended that his supervisor was verbally abusive to him. The statements of two witnesses, however, indicate that they heard appellant engage in verbal abuse of the supervisor. Appellant has not presented any credible evidence that the supervisor verbally abused him. He, therefore, has not established that the dispute over the misdelivery of mail occurred within the performance of duty.

Appellant claimed that he had requested a shop steward but the supervisor refused to allow the shop steward to see him. The supervisor indicated that the shop steward was asked to leave after arguing with her. There is no evidence that the supervisor acted improperly in ordering the shop steward off the employing establishment premises before the steward could meet with appellant.

Appellant claimed that the supervisor denied him a leave form. However, there is no evidence that such a denial occurred or that appellant stopped to ask for one as he left the employing establishment on August 10, 2000. Appellant stated that he had requested to talk to a shop steward concerning the supervisor's instructions on how to sort and case mail. The proper procedures in casing mail are an administrative function and therefore are not a compensable factor of employment unless error or abuse is shown. Appellant has not made such a showing here.

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 *Barbara E. Hamm*, 45 ECAB 843 (1994).

The decision of the Office of Workers' Compensation Programs dated November 16, 2000 is hereby affirmed.

Dated, Washington, DC
September 17, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member