

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUSSELL R. GRAY, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Manchester, NH

*Docket No. 01-1738; Submitted on the Record;
Issued April 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

On October 12, 2000 appellant, a 53-year-old letter carrier, alleged that on September 16, 2000 he became aware of his chest pain and emotional condition. On September 22, 2000 he related this condition to factors of his federal employment. Appellant stated that he was subject to stress and tension at work and that he was harassed. By decision dated May 25, 2001, the Office of Workers' Compensation Programs denied appellant's claim for an emotional condition.

The Board finds that appellant has failed to established that he developed an emotional condition due to factors of his federal 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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.¹

In this case, appellant attributed his emotional condition to actions by his supervisor, Cecile Strout. Appellant stated on September 14, 2000 that he was required to complete a part of another carrier's route. When he returned to the employing establishment, he was completing his assigned duties on overtime and speaking with a coworker. Ms. Strout sent him home. On September 15, 2000 Ms. Strout informed the union representative that she sent appellant home

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

for talking. On that same date, when appellant asked a coworker a question, Ms. Strout asked which route appellant was assigned to complete. On October 3, 2000 appellant returned to work after an absence. A coworker inquired about his condition. Ms. Strout appeared and again asked which route appellant was assigned to complete. Appellant admitted that he yelled at her and later apologized.

In support of his claim, appellant submitted a statement from a coworker, Louis A. Dupris, alleging that Ms. Strout harassed appellant by asking which route appellant was working. Mr. Dupris stated that, after appellant returned to work, Ms. Strout told him to return to work when appellant was discussing his condition with a coworker. Mr. Dupris stated that others were allowed to talk at great length. Paul Lamontagne, a coworker, also stated that Ms. Strout harassed appellant. He asserted, "She would jump all over him on the workroom floor in front of coworkers for just answering a question for a coworker. Others talk and Ms. Strout would n[o]t say a thing."

Appellant also alleged that he was denied leave in 1987 as well as denied leave for certain family weddings, that Ms. Strout declined to provide his check early when requested in 1992 and that Ms. Strout drove him to the hospital after a fall and was not properly solicitous about his health. Appellant stated that Ms. Strout received a card indicating that appellant had a personal package which had been misdelivered and that she taunted him by not immediately giving him the card.

Ms. Strout responded and stated that on October 3, 2000 appellant's conversation went on for a couple of minutes and denied the other allegations.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.² In this case, appellant attributed his emotional condition to administrative actions by his supervisor including leave denials,³ overtime denial and oral reprimands for talking rather than working. Appellant did not submit any evidence of error or abuse in the denial of requested leave or overtime. In regard to the oral reprimand, appellant submitted witnesses' statements that appellant was reprimanded for talking while others were allowed to converse. These statements do not establish error on the part of Ms. Strout in requiring appellant to work rather than converse with his coworkers.

Appellant also alleged that he was harassed by Ms. Strout's actions. 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. Unsubstantiated allegations of harassment or

² *Martha L. Watson*, 46 ECAB 407 (1995).

³ *Elizabeth Pinero*, 46 ECAB 123, 130 (1994).

discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁴ While the witnesses' statements provide support for appellant's claim that he was treated differently, the statements do not provide sufficient detail regarding the treatment of others to establish that appellant was harassed or discriminated against by Ms. Strout.

As appellant has not substantiated a compensable factor of employment, he has not met his burden of proof to establish an employment injury in the performance of duty and the Office properly denied his claim.

The May 25, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Alice M. Washington*, 46 ECAB 382 (1994).