

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY BLANCHARD and U.S. POSTAL SERVICE, NORTHERN  
VIRGINIA PROCESSING & DISTRIBUTION CENTER, Merrifield, VA

*Docket No. 02-1199; Submitted on the Record;  
Issued August 14, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

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

On December 6, 2000 appellant, then a 51-year-old distribution clerk, filed a claim for emotional stress. He stopped working on November 2, 2000. In an accompanying statement, appellant indicated that in February 2000 he returned from sick leave with a note from his physician. He alleged that his supervisor, Buffy Christensen, did not look at the doctor's note but issued him a letter placing him on leave restriction. Appellant claimed that a white employee who called in sick at least once a week was not placed on leave restriction. He contended that Ms. Christensen had to place him on leave restriction first before she could do the same to the coworker. Appellant indicated that he requested annual leave for June 30 through July 3, 2000 so he could attend a family reunion for which he had already spent money to attend. The leave request was denied, except for June 30, 2000. Appellant was unable to return to work on time so he requested sick leave. He was given eight hours of leave without pay. Appellant stated that two white coworkers requested sick leave in the same period and had their requests approved.

Appellant stated that he was forced to work outside his work restrictions in breaking down mail. He indicated that he complained of unfair treatment which gave rise to a meeting with his supervisor and her superior. Appellant commented that the discussion in the meeting was not progressing so he left the meeting. He stated that when he came to work the next night, he received a message instructing him to clean out his desk and leave the employing establishment. Appellant stated that he had never requested to be moved from his modified-duty position.

Appellant submitted a copy of a grievance he filed which discussed other incidents. He indicated that after his meeting with his supervisor and her superior, he was ordered to report to another office to answer telephones and assist in filing. Appellant noted that he was unable to perform other duties because he was restricted from typing. He stated that he was then assigned to work at the short paid table. Appellant indicated that the repetitive motion of that duty was

outside of his restrictions. He related that his supervisor for that function walked away to spend eight hours in the breakroom.

Appellant indicated that from July 10 to July 21, 2000, he was doing a mail survey in which he had to put approximately 14,000 entries into a computer. At the same time he was working on office files. On July 17, 2000 appellant's supervisor stated that he did not have enough work and sent him to another location where he was directed to break down packages of mail which was outside his work restrictions. He contended that other mail clerks were sitting around doing nothing while he was directed to work outside his restrictions. That afternoon, appellant was ordered to remove MMP mail from a tray of mail. When he objected that the job was outside his restrictions, the supervisor for that duty yelled at him. Appellant stated that he walked off the workroom floor and complained to Ms. Christensen. She ordered him to carry out the instructions given to him.

In a November 18, 2000 report, Dr. Paul I. Miller, a Board-certified gastroenterologist, stated that appellant had a history of ulcer disease. He indicated that appellant's symptoms had worsened recently in relation to increased job-related tensions. Dr. Miller recommended that appellant be allowed a leave of absence until the stress of his personal issue was resolved.

In response, the employing establishment noted that appellant, in his July 25, 2000 meeting with his supervisor and her superior, accused his supervisor of being racist. Appellant's supervisor noted that appellant claimed he had requested sick leave on the night of July 4, 2000 because he was drunk and could not drive to work. Ms. Christensen related that appellant only left a telephone message that night that he wanted annual leave, even though annual leave had previously been disapproved. She noted that appellant complained that he could not work with James Kim on the mail survey. He quit working on the survey and refused Mr. Kim's direction to continue the survey. She indicated that she instructed Rebecca Subido on July 17, 2000 to keep appellant busy. When Ms. Subido gave appellant assignments, he questioned Ms. Subido's authority to give him assignments. Ms. Christensen took appellant into a conference room and indicated that she would take care of any problems that arose with appellant. At the July 25, 2000 meeting, appellant stated that it was time to "part ways" with Ms. Christensen's office. She related that appellant, at that point, got up and left even though he was told that the meeting was not over. Appellant responded that the meeting was over. She went to appellant's desk but he was nowhere to be found in the employing establishment.

In a February 1, 2001 statement, the manager of the employing establishment indicated that appellant was assigned duties of answering telephones and assisting another clerk. When he was asked if he could help at the short pay table, he indicated that he could not do the work. The night shift manager looked at appellant and walked away. The employing establishment manager reported that appellant then unilaterally went to the breakroom for eight hours a day instead of performing his duty of answering telephones. When appellant was ordered to return to duty, he claimed that he was being discriminated against.

In a December 4, 2001 decision, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that he had not met his burden of proof. The Office found that Dr. Miller's November 18, 2000 report did not establish that appellant experienced a diagnosed medical condition in his work environment.

In a December 21, 2001 letter, appellant requested reconsideration. He submitted a December 7, 2001 report from Dr. Miller who indicated that he treated appellant for ulcer disease from April 14, 1999 to November 10, 2000. He stated that appellant's condition was induced by job stress. Dr. Miller reported that appellant required hospitalization and medication due to the job-related stress. He concluded that appellant was disabled from November 28, 2000 until he retired on May 16, 2001, with his condition improving after he retired.

In a February 6, 2002 merit decision, the Office modified its prior decision to find that appellant had established that he had an ulcer disease but that he had not established that he sustained an injury in the performance of duty.

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 a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

Appellant stated that the initial incidents that caused his condition were his placement on leave restrictions and the denial of his request for annual leave for three days. Issues pertaining to leave are an administrative matter and, therefore, not within appellant's performance of duty.<sup>4</sup> There is no evidence that the employing establishment erred or was abusive in denying appellant's leave.

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

<sup>2</sup> *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).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>4</sup> *Beverly Diffin*, 48 ECAB 125 (1996).

Appellant contended that he was assigned duties beyond his work restrictions, particularly against performing repetitive motion. His complaints specifically addressed the assignment to break up boxes of mail, to remove a certain class of mail from a tray of mail and to work at the short pay table. Appellant, however, did not clearly describe the duties involved in the jobs assigned to him and did not demonstrate how those duties exceeded his work restrictions. The assignment of those duties was an administrative matter within the discretion of appellant's superiors. There is no indication that the employing establishment erred in assigning appellant to jobs that exceeded his work restrictions as it was not established that those job assignments exceeded appellant's work restrictions. Appellant's reaction to the job assignments reflected a frustration in not being permitted to work in a particular environment or in a specific position. The job assignments therefore, cannot be considered a compensable factor of employment.

Appellant claimed that, in the midst of the job assignment issue on July 17, 2000, a supervisor yelled at him. Although verbal abuse is a compensable factor in certain circumstances, not every statement uttered in the employing establishment will give rise to coverage under the Act.<sup>5</sup> In this case, appellant provoked the verbal outburst by questioning the supervisor's authority to give him a particular job assignment. There is no question that the supervisor at that time had the authority to give appellant that job assignment. There is no indication that appellant was subjected to unwarranted verbal abuse at that time or was subjected to verbal abuse over an extended period. Appellant therefore, did not establish that this incident constituted a compensable factor of employment.

Appellant complained that he was subjected to racially disparate treatment, in that he was denied sick leave when it was given to other employees and he was placed on leave restrictions when a coworker who had abused leave was not placed on such restrictions until after he was placed on leave restrictions. Appellant, however, has only submitted allegations of disparate treatment. He did not submit any evidence that would give credence to his claim. He therefore, did not show that he was subjected to disparate treatment at the employing establishment.

Appellant indicated that he had a meeting with his supervisor and her superior in which he complained about unfair treatment at the employing establishment. He stated that he was then removed from his modified position as a result of that meeting. Appellant's supervisor stated that appellant indicated that it was time for him to part ways from that part of the employing establishment's operations. The action of appellant's supervisor to remove appellant from his modified position and place him in another assignment is an administrative action that apparently was taken at appellant's request. Appellant did not show that the employing establishment's actions were in error or abusive. He therefore, has not established that he was exposed to compensable factors of employment that would constitute an injury in the performance of duty.

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<sup>5</sup> *Christophe Jolicoeur*, 49 ECAB 553 (1998).

The decision of the Office of Workers' Compensation Programs dated February 6, 2002 is hereby affirmed.

Dated, Washington, DC  
August 14, 2002

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member