

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARL HAYWOOD and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 00-2188; Oral Argument Held January 15, 2002;
Issued January 25, 2002*

Appearances: *Kirk D. Williams, Esq.*, for appellant; *Julia Mankata, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

On December 8, 1998 appellant, then a 54-year-old custodian, filed a notice of occupational disease claiming that he suffered a stroke on November 13, 1998 due to job stress. Appellant was diagnosed with cardiovascular accident (CVA) and hospitalized on November 16, 1998. The Office of Workers' Compensation Programs denied appellant's claim on May 4, 1999 on the grounds that he failed to establish compensable factors of employment.

In this case appellant alleged that the following factors of his employment caused or contributed to his condition: (1) on November 13, 1998 appellant's supervisor, Mark Peachey, gave all employees their work assignments except for appellant and spoke to him in a "nasty tone" which caused his blood pressure to go up; (2) Mr. Peachey ignored his request for a medical slip to see the nurse when he had a headache; (3) he was detained for an hour when asked to fill out compensation forms; (4) his "pay disk" was missing when he went to punch in and out on November 14, 1998; (5) Mr. Peachey changed his assignment which caused him to become angry and gave him a headache; and (6) he was not paid for two hours on November 14, 1998 because he was away from his work assignment.

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence

identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.²

The initial question is whether appellant has substantiated compensable factors of employment as contributing to his emotional condition. If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.³

The Board finds that appellant has not established any compensable work factors.

Many of appellant's allegations relate to administrative or personnel matters by the employing establishment, which generally are not covered under the Act in the absence of error or abuse by the employing establishment.⁴ Appellant alleged that he was detained for an hour when filling out compensation forms because his supervisors could not figure out which form he needed to fill out. Mr. Peachey stated, however, that appellant sat for half an hour and then refused to fill out the form. A second supervisor, Dan Pryor, also stated that appellant refused to fill out the form and then left the building. Appellant also alleged that his "pay disk" was missing (his supervisor had the disk) when he went to punch in and out on November 14, 1998. Appellant's time card is an attendance issue which is an administrative function of the employer and not a duty of the employee.⁵ As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.⁶ Appellant also alleged that Mr. Peachey changed his duties from outdoors to indoors and put two junior men on his regular detail. Again, assignment of work is an administrative or personnel matter of the employing establishment and

¹ *Vaile F. Walders*, 46 ECAB 822 (1995).

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁵ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

⁶ *Id.*

coverage can only be afforded where there is a showing of error or abuse.⁷ Appellant has not submitted the necessary evidence to establish that the employing establishment erred regarding these administrative matters.

Further, appellant was not paid for two hours on November 14, 1998 because he was away from his work assignment. Appellant was found sleeping in the locker room from 2:45 to 4:55 a.m. and was taken “of the clock” for these two hours. Disciplinary actions are considered administrative functions of the employer and not duties of the employee and, as such, are covered under the Act only where error or abuse is shown.⁸ Appellant did not submit any evidence showing error or abuse on the part of the employing establishment regarding these personnel matters.

Appellant also alleged that on November 13, 1998 his supervisor gave all employees their work assignments except for appellant and spoke to him in a “nasty tone” and told him “do what you have always been doing.” Mr. Peachey stated, however, that appellant waited half an hour to ask him where he was assigned, at which time he questioned appellant as to why he waited so long to ask him if he was not paying attention. Appellant did not submit any evidence from witnesses or otherwise showing that his supervisor spoke to him in “a nasty tone.” In the absence of evidence supporting appellant’s version of the facts, appellant has not established that his supervisor spoke to him in an abusive manner.

Finally, appellant alleged that Mr. Peachey ignored his request for a medical slip to see the nurse when he had a headache. Mr. Peachey stated that appellant did not ask him for a medical slip but asked the other supervisor, Mr. Pryor. Mr. Pryor indicated in his statement that on November 13, 1998, appellant requested to go to the medical unit because he was not feeling well, was given a “completed 3956” form, and left his office to go to the medical unit. Again, there is no evidence of record indicating that appellant asked Mr. Peachey for a medical slip and was refused. The record indicates otherwise.

Appellant also generally alleged that his supervisor harassed him. For harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. In this case, appellant did not submit any witness statements or any other type of evidence to support this. Mere perceptions of harassment or discrimination are not compensable under the Act.⁹

The Board, therefore, finds that appellant has not substantiated a compensable factor of employment. Since no compensable factor of employment has been established, the Board will not address the medical evidence.¹⁰

⁷ *Alice M. Washington*, 46 ECAB 382 (1994).

⁸ *Sharon R. Bowman*, 45 ECAB 187 (1993).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *Supra* note 3.

The May 4, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 25, 2002

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member