

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. VITELLO and U.S. POSTAL SERVICE,
POST OFFICE, Warren, OH

*Docket No. 01-318; Submitted on the Record;
Issued January 3, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to compensable factors of his federal employment.

On March 27, 1996 appellant, then a 42-year-old clerk/carrier supervisor, filed a notice of occupational disease and claim for compensation. In an attached statement, he alleged that he had sustained depression as a result of several incidents which occurred during the performance of his employment. Appellant noted that he began to suffer great stress in late 1994 when postal inspectors initiated an investigation of his former supervisor, a Mr. Simon, for improprieties. He stated that his stress increased when he was interviewed by postal inspectors with respect to the activities of Mr. Simon, and stated that during these interviews his position was threatened, he was accused of being in the Mafia based on his Italian ancestry and he was pressured to provide testimony against Mr. Simon. Appellant asserted that he was also questioned about whether he himself had participated in Mr. Simon's improper activities. He stated that the stress became unbearable when his new supervisor, Paul Ruchtie, was appointed. Appellant alleged that Mr. Ruchtie repeatedly questioned him regarding his former supervisor's activities and seemed to be conducting his own investigation. He further alleged that Mr. Ruchtie began taking retaliatory action against him for his refusal to interfere in an Equal Employment Opportunity Commission (EEOC) action brought on by a coworker. Appellant asserted that Mr. Ruchtie attempted to put him in the middle of the EEOC complaint between two other employees and management when he asked appellant to go to the female employee and request that she testify that the other employee, a male, had ordered her to go to lunch with him. He stated that rather than doing this, he went to the employees involved and told them what Mr. Ruchtie had tried to get him to do. Appellant asserted that, when he declined to act as requested, Mr. Ruchtie began to degrade him and threaten him and make accusations against him. He further asserted that after Mr. Ruchtie came on board, there were constant evaluations and reevaluations of his performance. Appellant asserted that on March 14, 1996 he was asked to step down because he approved the late arrival of two workers. He stated that at least 10 carriers had come in late, but

that only his two workers, who were both of Italian ancestry, were reprimanded. Appellant stopped work on March 16, 1996.

By letter dated December 20, 1999, Mr. Ruchtie, appellant's supervisor, controverted appellant's claim, specifically refuting his allegations. Mr. Ruchtie stated that he had not asked appellant for any information regarding Mr. Simon and that, to the contrary, when he visited the station, it was appellant who would ask him the status of the investigation. He further stated that he never approached appellant to encourage him to get involved in the EEOC claim between the other coworkers, and never threatened his position or made any accusations or insinuations regarding his ancestry. Mr. Ruchtie agreed that he monitored the performance of his employees on a daily basis and stated that when the common goals were met, he offered praise and encouragement, but that if productivity was less than expected or when job performance was unsatisfactory, he also communicated this to his staff. With respect to the specific incident involving the late arrival of several employees, he explained that the issue was not that appellant had approved the late arrival of the employees, but that he never properly documented it on the appropriate forms. Mr. Ruchtie stated that several times prior to this incident he had informed and instructed his management staff, including appellant, of the shortcomings in the operation, the staff's duties and responsibilities, and other standard operating procedures. He stated that on March 13, 1996 he asked appellant if he thought he could do the job and work with him, and told appellant that he expected him to do his job properly and that he would assist appellant in finding another job within the agency if he felt he could not properly perform his supervisory duties. He stated that appellant assured him he could perform the work satisfactorily. However, on March 14, 1996, appellant allowed the same infractions to go undocumented. Mr. Ruchtie stated that he did not ask appellant to step down from his supervisory position, but rather reminded appellant of their discussion just a day earlier, and told him he had to make a decision to be a leader if he was to remain a supervisor, to follow proper postal procedures and instructions, or to resign his position as a supervisor and return to his craft as a letter carrier. He felt appellant was not performing in accordance with expectations.

By decision dated September 25, 1996, the Office of Workers' Compensation Programs denied appellant's claim finding that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. Following a hearing held at appellant's request, in a decision dated October 10, 2000, an Office hearing representative affirmed the decision of the Office dated September 25, 1996 which denied appellant's claim.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for a decision.

The initial question presented in an emotional condition claim is whether appellant has substantiated any compensable factors of employment contributing to his condition. 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 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 factors such 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 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 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 addition, matters involving disciplinary actions, performance evaluations, leave requests, work assignments and work monitoring relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁴ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties, and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁵ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁶

Regarding appellant's assertions that Mr. Ruchtie repeatedly questioned him regarding his former supervisor's activities, attempted to put him in the middle of an EEOC complaint between two other employees and management, and then, in retaliation for appellant's failure to comply, began to degrade him and threaten him and make accusations against him because of his ancestry, the Board finds that these allegations are not corroborated by the record. The Board notes that, at the hearing, appellant testified that Mr. Ruchtie did not in fact repeatedly interview him, but rather spoke to him in the ordinary course of business. The Board finds that there is no evidence of abuse or error on the part of Mr. Ruchtie with respect to any discussions he may have had regarding the investigation of Mr. Simon. With respect to his remaining allegations regarding Mr. Ruchtie's conduct, while appellant submitted statements from numerous coworkers, none of these statements serves to corroborate appellant's allegations. The majority

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

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

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

⁴ *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁵ *Id.*

⁶ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

of the coworkers either solely discuss their own experiences with Mr. Ruchtie or say that they noticed a change in appellant's normally happy demeanor after Mr. Ruchtie arrived, but do not corroborate appellant's specific allegations. One coworker stated that appellant told him that Mr. Ruchtie attempted to put him in the middle of an EEOC action between two other workers, but there is no evidence that this witness had any first hand knowledge of such actions on Mr. Ruchtie's part. Another coworker stated that Mr. Ruchtie screamed and yelled at appellant regarding his operation of the telephone system, but the witness did not say when the incident occurred or say whether he had first hand knowledge, or had merely heard of such an event. Another coworker stated that he saw appellant go into the supervisor's office for long meetings, from which he emerged distressed, but the witness did not know what transpired in these meetings. Finally, while one coworker stated that he had heard Mr. Ruchtie make jokes about Italian people, there is no evidence in the record that these remarks were ever directed at appellant, or that he was even present during such remarks. As the employing establishment has specifically denied each of appellant's allegations, and as appellant has provided no probative corroborative evidence, the Board finds that appellant has not established that these events occurred as alleged.

Regarding appellant's assertions that, after Mr. Ruchtie came on board, there were constant evaluations and reevaluations of his performance, and that on March 14, 1996 he was asked to step down because he approved the late arrival of two workers, the Board finds that while Mr. Ruchtie confirms that he kept a close watch on his employees and was displeased with appellant's performance, the handling of disciplinary actions and evaluations, the assignment of work duties and the monitoring of activities at work, although generally related to the employment, are administrative functions of the employer, and not duties of the employee.⁷ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁸ In the instant case, Mr. Ruchtie has clearly explained his actions regarding his reprimand of appellant for failing to follow procedures, and appellant had provided no evidence that Mr. Ruchtie erred or acted abusively with regard to this or any other matter. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Regarding appellant's allegations that he was harassed by postal inspectors during investigations into his own possible participation in Mr. Simon's activities, the Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially assigned employment duties are not considered to be employment factors.⁹ An employing establishment must retain the right to investigate an employee if wrong doing is suspected or as part of an evaluation process. In addition, appellant has provided no corroborative evidence of any error or abuse with respect to these interviews.

⁷ *Id.*

⁸ See *Richard J. Dube*, *supra* note 6.

⁹ See *Larry J. Thomas*, 44 ECAB 291 (1992).

However, with respect to appellant's role in the investigation of Mr. Simon, the Board has held that if an employee is required to participate in an investigation such that his participation becomes a specially assigned task, that can constitute a compensable factor of employment.¹⁰ In the instant case, as there is evidence in the record that appellant was interviewed on at least one occasion by postal inspectors, regarding Mr. Simon's conduct, and as this is not disputed by the employing establishment, the Board finds that under the facts of this case, appellant's participation in the investigation of Mr. Simon constitutes a compensable factor of employment. The case will be remanded to the Office for further evaluation and development of the medical evidence, and a determination as to whether the accepted factor of appellant's employment caused or contributed to his emotional condition.¹¹

The decision of the Office of Workers' Compensation Programs dated October 10, 2000 is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
January 3, 2002

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ *Id.*

¹¹ The Board notes that appellant has submitted some medical evidence which is supportive of his claim. In his report dated August 29, 1996, Dr. Jose W. Santiago, appellant's treating psychiatrist, stated that appellant's initial stress problems were created as a result of the questioning by U.S. Postal Inspectors regarding the conduct of Mr. Simon.