

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WENDELL R. HODGES and U.S. POSTAL SERVICE,  
POST OFFICE, Panama City, FL

*Docket No. 01-1079; Submitted on the Record;  
Issued January 15, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

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

On July 19, 1999 appellant, then a 61-year-old general clerk, filed a claim for anxiety disorder. Appellant traced the beginning of the condition to 1983 when he began losing the use of his right arm and shoulder, due to thoracic outlet syndrome and brachial plexus disease. He stated that he was belittled and harassed from the time of his employment injury. Appellant indicated that he tried to work but missed many weeks. He underwent surgery in August 1985 for removal of his first rib and surrounding muscle tissue.

Appellant was removed from his position as a letter carrier. He returned to limited-duty work in 1986 but stated that he was assigned to the same duties that caused his condition, such as delivering mail while carrying a mail satchel on his right shoulder. Appellant's physician stated that he should be removed from the position but his supervisor stated that the only available work was janitorial work. He indicated that in 1987 he became a delivery supervisor but was informed that he was not eligible for higher pay due to his status as an injured employee. Appellant filed an Equal Employment Opportunity (EEO) complaint. In 1988 he was placed in a clerk craft position, losing all seniority. He commented that he was informed that the employing establishment had no choice but to take away his seniority in the transfer but added that, under the union agreement, the transfer could have been done without loss of seniority.

Appellant indicated that over the next several years he was denied opportunities for promotion. He noted that in 1993 his clerk position was abolished and appellant was assigned to telephone duties. Later that year, he was placed in his old job at a higher level but was then told that he would have to do the job at his current pay level. Appellant stated that in 1994 his superiors threatened to fire him for going to too many medical appointments and therefore not being regular in attendance. He noted that in March 1998 he underwent surgery for removal of part of his right kidney. Appellant stated that the cancer was caused by many years of anti-inflammatory medications taken for his work-related injury.

In an October 4, 1999 decision, the Office denied appellant's claim on the grounds that he had not established how his emotional condition was causally related to a factor of his employment. Appellant requested a hearing, which was conducted on August 15, 2000. In a January 8, 2001 decision, the Office hearing representative found that several incidents had not occurred as appellant alleged, and that other factors claimed by appellant did not occur within the performance of duty. The hearing representative found that appellant had not established that he was subjected to discrimination at the employing establishment. He therefore affirmed the Office's October 4, 1999 decision.

The Board finds that appellant has not established that he was injured 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 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 claimed that, when he returned to work after surgery for his arm and shoulder condition, he was assigned to duties that exceeded his limitations, and, when his physician restricted him from such duties, was offered only janitorial duties. However, he has not submitted any evidence to substantiate this contention. This factor therefore cannot be considered to have occurred as alleged.

Appellant's other allegations relate to his transfer from a letter carrier position to a clerk position, his assignment to various positions, the denials he received when he sought promotion,

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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).

and the abolition of one position that was turned into a supervisory position. Appellant testified at the hearing that he was placed in charge of address management, was given a higher level position for a short time, and then was removed from the higher pay level because he was in a limited-duty position.

An official at the employing establishment stated that in 1993 the employing establishment was changed from the Pensacola to the Jacksonville district and all the positions were audited. As a result of that audit, appellant's position was abolished, some of the duties were returned to the supervisor of delivery, and appellant was given duties at the switchboard. After several months, appellant requested higher level duties and was allowed to go out on detail assignments. The official indicated that appellant was counseled about his attendance in 1994 for using excessive sick leave unrelated to his employment-related arm and shoulder condition. She denied that appellant was ever subjected to discrimination.

Appellant's complaints related not to stress in performing his assigned duties but to the duties to which he was assigned, the duties he was not allowed to perform, and his unsuccessful efforts to get a promotion or higher pay. Appellant's allegations therefore stem from his frustration in not being permitted to work in a certain environment or hold a particular position, and from his frustration in not receiving a promotion. These factors cannot be compensable because they are not part of appellant's assigned duties.

Appellant contended that he was subjected to harassment and discrimination in the denial of a promotion. He testified at the hearing that he was teased as being the "token white boy." Appellant made a general allegation that his emotional condition was due to harassment and discrimination by his supervisors. The actions of an employing establishment which an employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.<sup>4</sup>

In this case, appellant filed an EEO complaint, but there is no evidence or findings that he was subjected to harassment or discrimination at the employing establishment. Appellant therefore has not established that he sustained an emotional condition within the performance of duty.

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<sup>4</sup> *Joan Juanita Greene*, 41 ECAB 760 (1990).

The decision of the Office of Workers' Compensation Programs, dated January 8, 2001, is hereby affirmed.

Dated, Washington, DC  
January 15, 2002

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member