

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OSCAR A. ARGUELLO and U.S. POSTAL SERVICE,
POST OFFICE, Hialeah, FL

*Docket No. 01-1445; Submitted on the Record;
Issued March 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment.

On May 11, 1996 appellant, then a 48-year-old letter carrier, filed an occupational disease claim, alleging that harassment at work caused extreme stress and stomach problems. He did not stop work. In support of his claim, appellant alleged that he had been targeted by management who closely supervised him at work, given orders in a disrespectful manner, denied time with the union steward and questioned about his lunch break and telephone privileges. He stated that this caused depression, anxiety, loss of concentration, sleeplessness, chest and rectal pain, stiff neck and body rashes.¹ Appellant further submitted medical evidence.

In a letter dated June 5, 1996, the employing establishment countered appellant's allegations. By letter dated July 24, 1996, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his claim. No response was received and, in a decision dated January 13, 1997, the Office denied the claim on the grounds that appellant failed to establish fact of injury. On February 1, 1997 appellant requested a hearing that was held on January 26, 1998.

At the hearing, appellant indicated that on May 30, 1997 a settlement was received regarding a grievance, which was in violation of the national agreement. He also submitted additional medical evidence and evidence regarding grievances and Equal Employment Opportunity (EEO) complaints he had filed. By decision dated July 22, 1998, an Office hearing representative affirmed the prior decision as modified, finding that appellant failed to establish a compensable employment factor. In a letter dated July 13, 1999, that was stamped received by the Office on September 27, 2000 appellant requested reconsideration and submitted additional evidence, including statements of new allegations and additional information regarding

¹ Appellant specifically identified Mr. Cooper, Melinda Malone and Dalila Lopez.

grievances and EEO complaints. In a decision dated February 21, 2001, the Office denied modification of the prior decision.² The instant appeal follows.

The Board finds that this case is not in posture for decision.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³ Workers' compensation law is not applicable to each and every injury or illness that is somehow related to 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Act. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his employment duties, or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁸

² The Office further noted that appellant had identified new factors that occurred subsequent to his initial claim and indicated that he should file a separate claim for these contentions.

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Supra* note 5.

⁷ *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁸ *Lillian Cutler*, *supra* note 5.

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁹ This includes matters involving the training or discipline of employees. The Board has held, however, that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁰ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.¹¹

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced, which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹² Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. The issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹³

A claimant's reaction to administrative or personnel matters generally falls outside the scope of coverage of the Act. The Board has held that frustration with the policies and procedures of the employing establishment¹⁴ and mere disagreement of supervisory or management action¹⁵ are not compensable factors of employment. In this case, other than the grievance agreements discussed below, appellant provided nothing to substantiate his allegations and the employing establishment provided an explanation of its actions.

The Board has held that the fact that a claimant has filed EEO complaints and/or grievances, by themselves, would not establish that workplace harassment or unfair treatment occurred.¹⁶ The record in this case, however, contains two settlement agreements regarding grievances filed by appellant. The first of these is a Step 2 decision dated May 1, 1996 and is in regard to a grievance, in which appellant alleged that he was harassed on March 12, 1996 for

⁹ See *Gregory N. Waite*, 46 ECAB 662 (1995).

¹⁰ See *Jose L. Gonzalez-Garced*, 46 ECAB 237 (1994).

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² See *Michael Ewanichak*, 48 ECAB 354 (1997).

¹³ *Id.*

¹⁴ See *William Karl Hansen*, 49 ECAB 140 (1997).

¹⁵ See *Christophe Jolicoeur*, 49 ECAB 553 (1998).

¹⁶ See generally *Alice M. Washington*, 46 ECAB 382 (1994).

unprofessional estimate of mail, failure to adhere to line of travel, extended lunch and unprofessional conduct. The Step 2 decision states:

“Based on consideration of the facts, the information contained in the grievance file and pertinent contractual provisions involved, it is my decision that: The harassment and improper instructions of [appellant] will cease and desist. Instructions are rescinded. Manager has/will instruct supervisor on correct procedures on 3996 submission. Time wasting practice of requiring carrier to report to supervisor after casing a specified amount of mail is rescinded. Every effort will be made to insure receipt/submission of 3996’s are handled in a professional manner, void of any unnecessary harassment and intimidation.”

The Board finds that the Step 2 decision establishes error and abuse on the part of the employing establishment. It was specifically noted that appellant encountered harassment and received improper instructions.

The second agreement is a prearbitration settlement dated May 30, 1997, which merely indicates that appellant “will be permitted to complete PS Form 3971 in accordance with Article 41 of the National Agreement and all applicable handbooks and manuals.” This does not specify that the employing establishment erred and the Board, therefore, finds this is not compensable.

Appellant’s burden of proof is not discharged by the fact that he established one compensable employment factor, which may give rise to a compensable disability under the Act. To establish an occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the compensable employment factor.¹⁷

The relevant medical evidence¹⁸ includes an unsigned report dated April 30, 1996, in which Dr. Julio C. Machado, a psychiatrist, diagnosed major depression and advised that appellant’s condition “has definitely been aggravated by his employment since he finds the situation at work with his supervisors very stressful.” Dr. Machado continued that he could not declare appellant’s condition as “stemming directly from his employment.” In a January 10, 1998 report, Dr. Machado stated that appellant “has had an acute exacerbation of his condition related to perceived stressors at work.” In a report dated February 23, 1998, he noted that he had reviewed several grievances and EEO complaints for the period January to March 1996. Dr. Machado concluded:

“If [appellant] has been pressured at work and/or unjustly treated or has a perception of this, it could be said that due to his personality traits and coping style he would tend to become overwhelmed, irritable, angry and ruminative.”

¹⁷ *Id.*

¹⁸ Appellant also submitted additional medical evidence from Dr. Hugo Salgado-Lovo, a family practitioner. This is not relevant to the instant claim as Dr. Salgado-Lovo did not discuss the cause of appellant’s condition.

The Board finds that, while these reports are not sufficiently detailed to determine that appellant's emotional condition is causally related to the accepted employment factor, the reports are sufficient to require further development of the record.¹⁹ It is well established that proceedings under the Act²⁰ are not adversarial in nature,²¹ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.²² The case will, therefore, be remanded to the Office for further development regarding whether the March 12, 1996 harassment resulted in any condition for which appellant would be entitled to medical benefits or any periods of disability. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.²³

The February 21, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
March 26, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁹ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim in this matter and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second-opinion evaluation.

²⁰ 5 U.S.C. §§ 8101-8193.

²¹ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

²² See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

²³ The Board notes that appellant submitted medical evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).