

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARLIN K. BUTZ and U.S. POSTAL SERVICE,
POST OFFICE, Mason City, IA

*Docket No. 01-1692; Submitted on the Record;
Issued March 27, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained an emotional condition while in the performance of duty.

On March 23, 2000 appellant, then a 53-year-old custodian and laborer, filed a traumatic injury claim alleging that on March 10, 2000, while in the performance of duty, he was falsely accused of theft, questioned and fingerprinted by postal inspectors, causing him to suffer mental anxiety and trauma. Appellant stopped work on March 13, 2000 and returned to work on June 1, 2000. By decision dated June 14, 2000, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to establish a compensable factor of employment. Appellant requested an oral hearing and by decision dated March 21, 2001, an Office hearing representative affirmed the Office's June 14, 2000 decision.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

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

Perceptions and feelings alone are not compensable. 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.² To establish his claim 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.³

Appellant has attributed his emotional condition to events that occurred on March 10, 2000. He stated that, on that date, his immediate supervisor asked that he follow him to the second floor of employing establishment, where he was confronted by two postal inspectors who identified themselves and stated that they wished to question him, as well as fingerprint and photograph him, but would not tell him what the matter concerned. Appellant stated that he had been previously falsely been accused six years earlier and requested representation and at that time was told that the matter concerned the theft of employing establishment property. He stated that after his counsel arrived he was informed that he was being questioned about several computer components, which had been discovered in a dumpster. Appellant stated that despite his denial of any involvement in the matter, the inspectors repeatedly questioned him and asked him if his fingerprints would be found on the equipment. He consented to being fingerprinted and photographed and then was excused and returned to his normal work area. Appellant stated that afterwards he approached his supervisor and stated that he felt that having been accused of theft was a “damn dirty deal,” to which the supervisor responded that no one had accused him. He stated that he then went home for the weekend and, while at home, he began to feel he had been singled out and wondered if he had been set up on a false accusation. Appellant added that the postal inspectors never told him who had made the accusation or why he was a suspect.

Appellant stated that at first he was overwhelmed with anger at the prospect that another false accusation was causing him to suffer postal inspection harassment, but then the anger turned to fear that a conspiracy to falsely implicate him could exist which could threaten his job. He later testified that he had asked around and had not found any others who admitted to being questioned by the postal inspectors. Appellant also stated that his Freedom of Information Act request for a copy of the postal inspector’s investigative memorandum was denied. In addition, appellant stated that, after he returned to work, he observed some valuable equipment being stored in an unsecured location and that in light of the recent theft, about which he had been questioned, he filed a report of a hazardous or unsafe practice. He stated that, despite the employing establishment requirement, he never received a response to his report.

In response to appellant’s allegation, the employing establishment stated that appellant had been questioned as part of a routine investigation and that they did not have a copy of the investigative memorandum.

² *Pamela R. Rice*, 38 ECAB 838 (1987).

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

Although the employing establishment's investigation on March 10, 2000 is generally related to appellant's employment, it relates to administrative functions of the employer and not to appellant's regular or specially assigned duties.⁴ In this case, the administrative function of the employer is to investigate the disappearance of several computer components, which were subsequently discovered in a dumpster. Where the evidence demonstrates that the employing establishment neither erred nor acted abusively in the administration of such matters, coverage will not be afforded.⁵ Consequently, a mere reaction to an administrative investigation, without more, is not covered by the Act.⁶ Under the circumstances of this case, appellant has not established that the employing establishment erred or acted abusively in conducting its March 10, 2000 investigation. The employing establishment stated that the investigation was a routine response to the discovery of the apparent theft and appellant has submitted no evidence to the contrary.

Regarding appellant's allegations that the employing establishment failed to respond to his report of an unsafe and hazardous condition and further denied his request for a copy of the Postal Inspector's investigative memorandum, the Board finds that these allegations relate to the administrative functions of the employer and not duties of the employee and, therefore, do not fall within the coverage of the Act.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 As appellant has provided no evidence to support his allegation that the employing establishment erred or acted abusively in failing to respond to his report, appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

With respect to the denial of appellant's request for a copy of the Postal Inspector's investigative memorandum, in a letter dated May 24, 2000, the employing establishment stated that the Postal Inspection Service had informed them that no investigative memorandum had been generated. Subsequently, by letter dated October 6, 2000, the inspection service contacted appellant directly and explained that as the investigation was still ongoing, the information appellant requested constituted investigatory records compiled for law enforcement purposes and was exempt from mandatory disclosure. The Postal Inspection Service informed appellant that after the investigation was concluded, he could renew his request for records at that time. As both the employing establishment and the Postal Inspection Service had explained why they did

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ See *Arthur F. Hougens*, 42 ECAB 455 (1991) (where the Board held that investigations into alleged illegal or improper acts are not within an employee's performance of duty); *Chester R. Henderson*, 42 ECAB 352 (1991); *Donna Faye Cardwell*, *supra* note 3.

⁷ *Id.*; 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).

⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

not grant appellant's request for a copy of the investigative memorandum and as appellant has not submitted any evidence of error or abuse, the Board finds that appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

With regard to appellant's claim that he was singled out for harassment by the postal inspectors, this is also an unfounded perception, which does not constitute an employment factor.⁹ For harassment to give rise to a compensable disability under the Act, there must be some evidence that the harassment did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁰ Appellant has failed to establish a factual basis for his allegations that his claimed emotional condition was caused by harassment from the employing establishment.

Inasmuch as appellant did not submit rationalized medical evidence establishing that his emotional condition was caused by a compensable factor of employment under the Act, the Board finds that appellant has failed to satisfy his burden of proof in this case.

The March 21, 2001 and June 14, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 27, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ See *Kathleen D. Walker*, *supra* note 5; *Ruthie Evans*, 41 ECAB 416 (1990).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).