

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY D. CARTER and DEPARTMENT OF VETERANS AFFAIRS,
NATIONAL CEMETERY, Houston, TX

*Docket No. 01-2145; Submitted on the Record;
Issued May 10, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition or an aggravation of his hypertension in the performance of duty.

On September 29, 1999 appellant, then a 49-year-old tools and parts attendant, filed a claim for an occupational disease for anxiety, stress and elevation of his blood pressure. As to the cause of these conditions, appellant stated: "I filed an EEO [Equal Employment Opportunity] and grievance with the union. Every since filing the grievance I have been harassed and continually abused by the director, Jorge Lopez and foreman, Samuel Reyes. Job assignments have not been within my position description. Also racial discrimination."

In a statement accompanying his claim form and a later statement submitted in response to a request from the Office of Workers' Compensation Programs for further information on his claim, appellant attributed his conditions to the denial of a promotion to the position of cemetery caretaker when he was a temporary employee, to job assignments such as pulling weeds that he characterized as punishment and to the abolition of his position of tools and parts attendant, which was announced on July 16, 1999.

By decision dated December 20, 1999, the Office found that all of the employment factors cited by appellant were either not compensable or had not been shown to have occurred.

Appellant requested a hearing, which was held on June 21, 2000.

By decision dated August 23, 2000, an Office hearing representative found that appellant's reactions to employing establishment personnel actions involving promotion or reassignment were not compensable and that discrimination was not established in the absence of findings on appellant's EEO complaints.

The Board finds that appellant has not established that he sustained an emotional condition or an aggravation of his hypertension in the performance of duty.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his 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. 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.¹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.²

Appellant attributed his emotional condition and the aggravation of his hypertension to administrative or personnel actions by the employing establishment: denial of a promotion, abolition of his position of tools and parts attendant and assignment of duties.³ While these actions generally would not be covered under the Act, appellant alleged that the employing establishment's actions were undertaken as a result of discrimination or in order to harass him for filing EEO complaints.

The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.⁴

Appellant has not established that harassment or discrimination in fact occurred. He submitted no evidence to support his allegation that he was not promoted because of discrimination. A July 16, 1999 employing establishment memorandum regarding the abolition of the position of tools and parts attendant and the addition of the duties of this position to that of automotive mechanic states that this change was made to utilize resources in a more effective way. The employing establishment's cemetery director and foreman both stated that the tools and parts attendant position was actually a half-day position and that the abolition of the position was based on employing establishment needs and the distribution of limited manpower.

Appellant has not established that duties were assigned to him in order to harass him for filing EEO complaints. The duties appellant objected to, such as weeding, were assigned to him both before and after he filed an EEO complaint and the cemetery director, who would have

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

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

³ *James W. Griffin*, 45 ECAB 774 (1994).

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

more access to information about job assignments than appellant or his coworkers, stated that the individuals who held the tools and parts attendant position before appellant were also assigned to duties on the grounds of the cemetery. The cemetery foreman stated that all employees were assigned to half days trimming when the weather was hot. The position description for tools and parts attendant includes “[p]erforms other related duties as assigned in keeping with the overall operation of the cemetery.” It appears that the practice at the employing establishment was to include duties on the grounds as part of the duties of the tools and parts attendant.

Appellant stated that on September 21, 1999 he was assigned to trimming while employees with less seniority were assigned to mowing and other duties. The cemetery acknowledged that this occurred, but stated that it was done to train the lower graded employees. Appellant has not shown this assignment was erroneous or abusive. He also has not shown error or abuse in the foreman’s request that he be notified when appellant knew in advance that an EEO investigator would arrive or in the employing establishment’s denial of appellant’s requests for annual leave for August 4 or 6, 1999. He has not established any compensable factors of employment.

The August 23, 2000 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC
May 10, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member