

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARINELLE K. VARELA and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Louisville, KY

*Docket No. 02-1829; Submitted on the Record;  
Issued February 6, 2003*

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DECISION and ORDER

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

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

On May 4, 2001 appellant, then a 53-year-old distribution clerk, filed a claim for stress, anxiety and aggravation of manic depression. She stated that her supervisor attempted to have her sign an illegal job offer and warned he would walk her out of the employing establishment if she refused the job offer. She claimed that the job offer was missing required elements and contained incorrect information.

Appellant submitted a copy of an April 2, 1997 job offer, for the position of modified distribution clerk, with work consisting of casing mail and a restriction of no lifting over 20 pounds with no lifting over 5 pounds by the left hand. Appellant rejected the job offer on the grounds that it lacked a complete description of job duties, did not specify the organization to which she would be assigned, did not give a date on which she would report to work and did not give a date by which she had to respond to the job offer. Appellant submitted the April 18, 2001 job offer of a modified distribution clerk with similar job duties and restrictions. Appellant rejected the job offer, stating that it would have been accepted if she had been assigned to the nixie unit as promised by her supervisor. She stated that she was being assigned to a unit at which she had been harassed since 1993. Appellant claimed that the job offer lacked a date by which she would start, did not specify the organization location of the position and did not contain mental restrictions.

Appellant alleged that on April 19, 2001 her supervisor presented her with the job offer of a permanent rehabilitation position. Appellant stated that she had been working in the nixie section since April 2000, while waiting on promised training. She indicated that the job offer would place her back in the section where she had worked previously. Appellant believed she had an understanding with her supervisor that she would not have to return to that section.

In a May 14, 2001 statement, Clyde E. Whartenby, appellant's supervisor, noted that he had attempted to accommodate appellant's problems with coworkers by letting her work in the nixie section and tried to limit her conflicts with other employees. He stated that he had discussed with appellant the possibility of making a rehabilitation job offer as a modified nixie clerk, but appellant stated that she did not believe she could learn the required schemes. He indicated that in April 2001 the employing establishment was informed that appellant's stress claim had resolved and she had reverted back to her prior restrictions. He, therefore, presented appellant with a job offer placing her back in the manual letters section where she had worked for several years. He commented that the most productive work for appellant was in the manual letters section. Mr. Whartenby noted that appellant called the job offer illegal. He informed her that the employing establishment's injury compensation office had considered the job offer to be proper and that if appellant refused the job offer, she would have to leave.

The Office of Workers' Compensation Programs requested a further statement from appellant. In a June 19, 2001 letter, appellant repeated her description of the job offer. She described some of the harassment she received from coworkers in the manual letters section. Appellant noted that other employees had been placed in modified-duty positions outside the manual letters section that could have been given to her. She indicated that she had told Mr. Whartenby that she could not learn the nixie schemes because her "brain felt like jelly" due to the stress and harassment she had received in the manual letters section. Appellant alleged that Mr. Whartenby had promised in the presence of another supervisor to assign her to the nixie unit. Romeo Guterrez, the supervisor cited by appellant, indicated in a June 20, 2001 statement that he could not recall meeting with appellant and Mr. Whartenby.

In an October 1, 2001 decision, the Office denied appellant's claim for an emotional condition on the grounds that had not cited any compensable factors of employment as the cause of her emotional condition and, therefore, had not sustained an injury within the performance of duty.

Appellant requested a hearing before an Office hearing representative. At the February 14, 2002 hearing, appellant indicated that when she was first assigned to the manual letters section due to a carpal tunnel condition, the supervisor of the section attempted to refuse to have her work in the section because of her disability. Appellant testified that, after he was required to accept appellant, he would deliberately lose her work restrictions statement from his files and would attempt to require appellant to work beyond her restrictions. Appellant alleged that on one occasion she sustained a bruise while working beyond her restriction and brought the injury to the attention of her superiors. After that incident, appellant indicated that she was subjected to daily harassment by her coworkers in the manual letters section, which include public insults, being deliberately bumped by carts pushed by coworkers, being coughed on and on one occasion, watching a coworker who was pushing a cart change direction and deliberately ran over her foot with the cart. Appellant alleged that the supervisor was aware of the harassment but took no steps to stop it, despite her complaints.

In a May 23, 2002 decision, the Office hearing representative found that the job offer to appellant was an administrative matter and, therefore, was not a compensable factor of employment absent a showing of error or abuse. He found that appellant had not established that

the employing establishment had erred or acted abusively and affirmed the October 1, 2001 decision.

The Board finds that appellant did not sustain an emotional condition within 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 her 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>

The primary factor cited by appellant as the cause of her emotional condition is the offer of a modified distribution clerk position in the manual letters section. The offer of the job was an administrative action of the employing establishment. Appellant's reaction to the job offer constitutes frustration in not being given a job offer in a particular position in the nixie section. Such frustration in not being allowed to work in a particular position is not a compensable factor of employment. Appellant's reaction was also partly a reaction based on a fear of future injury. The possibility of a future injury, however, does not constitute an injury under the Act.<sup>4</sup>

Appellant claimed that she was promised a position in the nixie section. Mr. Whartenby stated that appellant indicated that she would be unable to learn the scheme for the nixie section so he placed her in a position, in which he judged she would be most productive. Appellant contended that Mr. Whartenby's account was incomplete because she attributed her inability to learn the scheme at that time to the effect of the harassment she had received from coworkers.

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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).

<sup>4</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

Appellant, however, has not demonstrated that the job offer given to her was in error or abusive. Nor was appellant specific with regard to her allegations of harassment. She, therefore, has not established that her emotional condition was due to a compensable factor of employment and, as a result, occurred within the performance of duty.

The decisions of the Office of Workers' Compensation Programs, dated May 23, 2002 and October 1, 2001, are hereby affirmed.

Dated, Washington, DC  
February 6, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member