

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE R. McENDREE and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 02-1967; Submitted on the Record;
Issued January 28, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On August 10, 2000 appellant, a 44-year-old letter carrier, filed a claim for compensation, alleging that he had developed an emotional condition caused by factors of his employment. Appellant stated that he became depressed, moody, cried uncontrollably and experienced sleep deprivation after he received an April 7, 2000 letter of removal from the employing establishment.

In a statement dated August 10, 2000, appellant alleged that he was interviewed on April 1, 2000 pursuant to an investigation by supervisor Tim Hyers, who asked him questions regarding a work-related injury and his subsequent disability and recovery period. After being told he was being placed on administrative leave on April 10, 2000 appellant received a certified letter advising that he was being removed from the employing establishment. He became severely depressed and anxious, worrying about how to support his family and pay his bills. Appellant alleged that the employing establishment acted without conscience, as if ordered by "supervisors" to disregard the facts and intentionally ruined his career.

In a report dated August 28, 2000, Dr. Arthur J. Forman, Board-certified in psychiatry and neurology, stated that he first saw appellant on April 24, 2000 at which time he was complaining of crying spells, headaches, weight loss, anxiety and problems controlling his emotions. He related that appellant's symptoms were caused by his receipt of a letter of removal from the employing establishment, which terminated him from his job following an investigation of alleged fraud.

By decision dated September 26, 2001, the Office of Workers' Compensation Programs found that fact of injury was not established as the evidence of record did not establish that an emotional condition was sustained in the performance of duty.

In a letter to the Office dated April 12, 2002, an employing establishment management official stated that the notice to remove appellant was rescinded on April 30, 2001. The employing establishment advised that it had requested updated information from appellant regarding his restrictions, upon receipt of which he was offered a job as a modified city carrier. Appellant rejected the offer and filed a grievance to bid on his old route, which he ultimately regained through a settlement agreement.

By letter dated October 2, 2001, appellant's representative requested an oral hearing, which was held on March 28, 2002.

By decision dated June 14, 2002, an Office hearing representative affirmed the September 26, 2001 Office decision.

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

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition. There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.

The first issue to be addressed is whether appellant has established a factor of employment that contributed to his alleged emotional condition or disability. 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 Federal Employees' Compensation Act. On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.

The Board notes that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. However, appellant has submitted no evidence indicating that the employing establishment committed error or abuse or that its actions in this instance were unreasonable.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors. 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. The Board finds that appellant has not shown that the employing establishment's actions in connection with its investigation were unreasonable. Although appellant alleged that the employing establishment erred and acted abusively in conducting its investigation, he has not provided sufficient supporting evidence to support his allegations. Appellant alleged that the employing establishment's investigators made abusive, accusatory and derogatory statements during the course of the investigation of him, but he provided insufficient evidence, such as witness statements, to establish that the statements were actually made.

In regard to the employing establishment's investigation of appellant's activities while on disability, this does not establish a factor of employment. The employing establishment acted within its administrative functions in conducting surveillance and in monitoring appellant's daily activities. The surveillance was performed pursuant to an investigation, which was undertaken to confirm that his disability was actual and legitimate. Appellant has, therefore, not established a compensable employment factor under the Act with regard to any aspect of the employing establishment's investigation of his conduct.

The Board finds that the administrative and personnel actions taken by management agency error and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably. In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. In addition, the evidence of record indicates that the employing establishment was not acting in an unreasonable manner by issuing a letter of removal based on the results of its investigation. Appellant has submitted no evidence indicating that the employing establishment did not act upon the reasonable belief that he had engaged in improper conduct based on the results of its investigation or otherwise acted unreasonably in exercising its disciplinary authority. Appellant has produced no evidence that the employing establishment acted unreasonably or committed error in discharging his administrative duties during this period. Regarding appellant's allegation that he developed stress due to the uncertainty of his job duties and his insecurity about maintaining his position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act. Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of agency error such personnel matters were not compensable factors of employment.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions and unreasonably monitored his activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act. Although the handling of disciplinary actions and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee. 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.

In this case, appellant has failed to submit sufficient evidence indicating that the employing establishment acted unreasonably in discharging its administrative duties. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters. Additionally, the mere fact that his notice of removal was subsequently rescinded does not in and of itself establish error or abuse.¹

Appellant has also alleged that harassment on the part of his supervisor contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment by a supervisor is established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors. 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 of harassment or discrimination are not compensable under the Act. In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination.

The Board finds that appellant has failed to submit sufficient corroborating evidence to establish his allegations that he was harassed and treated in a discriminatory manner by his supervisor. These included appellant's allegations that the employing establishment intentionally harassed him by disregarding the surrounding facts and circumstances in an effort to ruin his career. Appellant has alleged, in general terms, harassment from the employing establishment, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the allegations. Appellant has not submitted any factual evidence to support his allegations that he was harassed, mistreated or treated in a discriminatory manner by his supervisors. He has failed to provide support for his allegations that investigators made derogatory and accusatory remarks toward him.

The Office reviewed all of appellant's specific allegations of harassment, abuse and mistreatment and found that they were not substantiated. To that end, the Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by him, as he failed to provide any corroborating evidence for his allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work, which do not support his claim for an emotional disability. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination. Accordingly, as appellant failed to submit factual evidence in support of his claim that factors of his federal employment caused an emotional condition, the Board affirms the June 14, 2002 decision of the Office hearing representative, which affirmed the September 26, 2001 Office decision.

¹ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

The decisions of the Office of Workers' Compensation Programs dated June 14, 2002 and September 26, 2001 are hereby affirmed.

Dated, Washington, DC
January 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member