

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER E. STUCKEY and U.S. POSTAL SERVICE,
LARKIN SMITH FACILITY, Gulfport, MS

*Docket No. 00-2389; Submitted on the Record;
Issued June 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition due to the events of April 27, 1999.

Appellant, a 37-year-old modified mark-up clerk, filed a notice of traumatic injury on May 20, 1999 alleging that on April 27, 1999 he developed an emotional condition due to actions of his supervisor. Appellant stated that his supervisor threatened him with discipline and pushed him for additional production. By decision dated August 12, 1999, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to substantiate a compensable factor of employment. Appellant requested an oral hearing on August 30, 1999. In a decision dated June 7, 2000, the hearing representative affirmed the Office's August 12, 1999 decision finding that appellant had not established a compensable factor of employment.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an emotional condition on April 27, 1999.

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 concept 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 is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.¹

Appellant attributed his emotional condition to actions of his supervisor, Glynn C. Steele, on April 27, 1999. He stated that he attempted to call Ms. Steele on the evening of April 25,

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

1999 to report his anticipated absence on April 26, 1999. Appellant reported that Ms. Steele's voice mail was not operational and that he notified Jeff W. White, the station manager, of his intended absence by voice mail on April 25, 1999. Appellant asserted that he attempted to comply with the employing establishment directive to notify his supervisor as soon as possible of the impending absence. On April 27, 1999 appellant asked Ms. Steele if she had received his request for sick leave on April 26, 1999 through Mr. White and she replied that she had not received the message and considered him to be absent without leave for that date. Appellant then completed a leave request form and alleged that he used sick leave due to pain in his arms and hands.² He stated that Ms. Steele's threat of discipline in the form of an accusation of absence without leave contributed to his emotional condition. Appellant noted that he had received a letter of warning due to absence without leave, but that this did not contribute to his emotional condition. Instead, appellant asserted that this letter constituted proof that Ms. Steele was threatening him with discipline.

Appellant noted that Ms. Steele assigned him the duty of clipping magazines. He said that she returned after a short period and asked why he had not accomplished more work. Appellant informed Ms. Steele that his hands were hurting and becoming numb. Ms. Steele began counting the magazines that appellant had completed. He stated that this was not normal practice. Appellant also attributed his emotional condition to this "push for production."

Ms. Steele completed a statement asserting that she assigned appellant duties of placing labels on envelopes, tearing address information from the mail piece and placing this on the envelope on April 27, 1999. She stated that after 45 minutes she observed that appellant was unnecessarily preparing envelopes and had completed very few pieces of mail. Ms. Steele addressed this issue with appellant, who evaded her queries and asked if she had received notification from Mr. White regarding his absence on April 26, 1999. Ms. Steele replied that she had not discussed his absence with Mr. White and that she had found him to be in an absent without leave status as he had not directly contacted her regarding his absence on April 26, 1999. Appellant indicated to Ms. Steele that his absence was due to pain in his hands and arms. Ms. Steele stated that she did not threaten appellant with discipline and that she did not push him for production. She asserted that appellant did not perform the duty assigned and that she called this to appellant's attention.

In an email dated April 2, 1999, Ms. Steele noted that appellant failed to advise her of his absences on April 1 and 2, 1999. Mr. White replied that appellant had notified him and that appellant should receive sick leave. However, he noted, "If he has been given instructions earlier about reporting his absence to you and is failing to do so then discipline will be appropriate." Ms. Steele stated that she reminded appellant that he had to follow correct procedures for reporting sick leave by contacting his immediate supervisor and that on April 26, 1999 he disregarded her direct instructions and again reported to Mr. White. The employing establishment noted that appellant was aware that Ms. Steele's voice mail would not be operational in the evenings and that he could have readily contacted her in the morning of April 26, 1999 at least two hours prior to the time he was to report to work.

² Appellant asserted that the Office accepted his claim for bilateral carpal tunnel syndrome.

Regarding appellant's allegations that the employing establishment threatened or implied that he would be subject to improper disciplinary actions and unreasonably monitored his activities at work, the Board finds that these allegations related 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 Federal Employees' Compensation Act.³ 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.⁴ 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.⁵ Appellant has submitted no evidence that the employing establishment, through Ms. Steele, acted unreasonably in asserting that as she had not received notice that appellant requested leave for April 26, 1999 she considered him to be in an absent without leave status. Appellant also failed to submit evidence that Ms. Steele acted unreasonably in assigning and monitoring tasks. Although he asserted that she "pushed him for production," Ms. Steele denied this allegation and stated that she merely asked why appellant had not performed the assigned tasks. Thus appellant has not established a compensable employment factor under the Act with respect to administrative matters and has not met his burden of proof in establishing that he sustained an emotional condition on April 27, 1999. As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.⁶

³ 5 U.S.C. §§ 8101-8193; see *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gates*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁴ *Id.*

⁵ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁶ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The June 7, 2000 and August 12, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 9, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member