

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVERETT C. HARRINGTON and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 02-402; Submitted on the Record;
Issued June 27, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

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

On July 22, 1998 appellant, then a 40-year-old mailhandler, filed a claim for an occupational disease caused by stress. In an accompanying statement, appellant alleged that he was harassed regarding his job performance because he is Caucasian and married to an African-American woman. He alleged that he was frequently paged by his supervisors, threatened with discipline by supervisor Millard Wright when he did not respond to a page, assigned to a task by one supervisor and criticized by another supervisor for not being in a different work area, and required to perform the work of absent employees. Appellant alleged that manager Anthony Dupuy denied his request for use of LWOP (leave without pay) for a vacation instead of annual leave and subsequently harassed him by threatening to assign appellant's wife to a different tour when appellant filed a grievance. He alleged that supervisor Rudy Courseault harassed him by telling another employee that appellant and his wife made him sick because they were always together and supervisor Dorothy Mae harassed him by telling him she did not like his wife and did not want her to visit appellant's work area. Appellant alleged that Ms. Mae changed his lunch hours frequently because of his race. He alleged that Mr. Wright and Mr. Courseault harassed him by denying his requests for leave and assistance and by following him around and giving instructions. Appellant alleged that supervisor Connie Hayes harassed him by accusing him of causing past work accidents through negligence and Mr. Courseault harassed him by falsely accusing him of deliberately bumping into him for which appellant was placed in off-duty status without pay. He alleged that his wife's supervisor, Sam Hall, harassed him by warning him to "watch his back" because he had filed charges of racial discrimination, that he was unfairly investigated, and that management harassed him and violated his privacy by disseminating information about his compensation claim to other employees. Appellant submitted several medical reports regarding his condition, diagnosed as major depression with psychotic features and generalized anxiety disorder.

By decision dated October 5, 1998, the Office of Workers' Compensation Programs found that the evidence failed to establish that appellant's emotional condition was sustained in the performance of duty, as the incidents were either self-generated, involved administrative functions of the employer or were not shown to have occurred.

Appellant requested a hearing by letter dated October 31, 1998. On May 23, 2001 a hearing was held and appellant testified. He submitted additional evidence regarding harassment from the employing establishment.¹

By decision dated July 30, 2001 and finalized August 2, 2001, an Office hearing representative found that the evidence was not sufficient to warrant modification of its prior decision.

The Board finds that appellant has not established that he sustained an emotional condition 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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² 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.³ 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.⁴ Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁵

Appellant submitted numerous Equal Employment Opportunity (EEO) complaints and grievances as support of his claim of harassment and discrimination and to show error or abuse by the employing establishment in its administration of personnel matters. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular

¹ This evidence included a letter from Mr. Dupuy directing appellant to report to the flat sorter unit, documents regarding appellant being disciplined for unacceptable conduct when he bumped into Mr. Courseault and threw a mail container, and a request from a supervisor that appellant undergo a psychological evaluation.

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

duties, these could constitute employment factors.⁶ 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.⁷ The fact that appellant filed EEO complaints and grievances does not substantiate the allegations contained therein.⁸

In this case, appellant did not submit any specific findings of harassment or discrimination, or other probative evidence to establish his claim. He generally alleged harassment and discrimination without submitting supporting evidence. Additionally, during a meeting with Mr. Dupuy on July 23, 1998, appellant denied that he thought his supervisors harassed and discriminated against him.

Appellant also has not shown error or abuse in the employing establishment's decisions regarding use of leave and assistance with his tasks, investigations, being disciplined, having supervisors page him, being told that he and his wife could not be in the same work area, having his lunch hours changed, being given instructions from his supervisors and having his work closely monitored and having to perform the assignments of absent employees which are administrative in nature.⁹ The employing establishment denied appellant's allegations of harassment and discrimination. In letters dated August 5 and September 9, 1998, Mr. Dupuy stated that he met with appellant on July 23, 1998 and asked him to provide specific information concerning allegations of harassment or discrimination. Appellant responded that, due to his supervisors' "poor attitude" towards him, additional employees were not assigned to his work area as he requested, he was often paged by supervisors looking for him and he was sometimes denied leave requests. When questioned by Mr. Dupuy, he denied that he thought the actions of his supervisors were the result of bias against him based on his marriage and he denied that he was harassed or discriminated against by his supervisors. Mr. Dupuy advised that appellant was temporarily transferred away from the supervisors he accused of harassing him but then later claimed that the reassignment was stressful. Appellant's requests for the assignment of extra workers was denied as a supervisory decision, that appellant was paged when supervisors needed to locate him and that his leave requests were granted or denied on the basis of staffing and other work-related reasons. Mr. Dupuy stated that supervisors exercised their job responsibilities when giving appellant instructions, monitoring his performance or taking disciplinary actions. Supervisors James Felder, Courseault and Wright also submitted statements denying appellant's allegations. The employing establishment has refuted appellant's allegations regarding these administrative and personnel matters and the evidence submitted by appellant does not establish any error or abuse by the employing establishment.

In summary, appellant has not submitted evidence sufficient to establish error or abuse in the employing establishment's administration of personnel matters. He also has not established

⁶ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁷ See *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁸ *Michael Thomas Plante*, *supra* note 4.

⁹ *Jimmy Gilbreath*, 44 ECAB 555 (1993).

allegations of harassment or discrimination. As appellant has not established any compensable factors of employment, the Board will not address the medical evidence.¹⁰

The decision of the Office of Workers' Compensation Programs dated July 30, 2001 and finalized August 2, 2001 is affirmed.

Dated, Washington, DC
June 27, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

¹⁰ *Margaret S. Krzycki*, 43 ECAB 496 (1992).