

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUE R. LORD and U.S. POSTAL SERVICE,
POST OFFICE, Warner Robins, GA

*Docket No. 03-863; Submitted on the Record;
Issued June 24, 2003*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On June 25, 2002 appellant, then a 43-year-old letter carrier, filed a notice of occupational disease alleging that on March 22, 2002 she realized that her federal employment caused her major depression. Appellant stated that she suffered from stress, anxiety and depression due to having received a notice of removal from the employing establishment on March 1, 2002 for failing to be in regular attendance. She claimed that she was being "set up" to be fired. The record indicates that the notice of removal was later reduced to a 30-day paper suspension to be kept in appellant's file for 2 years. The removal letter indicated that appellant had previously received several letters of warning and had been suspended several times in 2001 for failing to be in regular attendance and for other violations. Appellant stopped work on March 22, 2002 when she claimed she had a "breakdown."

Appellant's employing establishment controverted the claim, stating that she had been given ample warning to correct her attendance problem.

Appellant was diagnosed with adjustment disorder with depression on March 28, 2002.

By letter dated August 21, 2002, the Office of Workers' Compensation Programs notified appellant that additional evidence was necessary to establish her claim for an emotional condition.

In a letter from appellant's representative dated October 18, 2002, she stated that appellant's treatment had been "unfair" because appellant had personal knowledge of three other employees who had been late on numerous occasions but had not been disciplined.¹

By decision dated January 29, 2003, the Office denied appellants claim for an emotional condition on the grounds that she did not establish that her injury was sustained in the performance of duty. The Office also found no error or abuse on the part of the employing establishment and therefore no compensable factors of employment were established.

The Board finds that appellant has not met her burden of proof to establish that she 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 her 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁴ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁵

¹ Appellant also claimed that she received a letter of warning regarding her behavior towards a customer but claimed that it was not true.

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁵ *Id.*

In this case, appellant alleged that she sustained an emotional condition as a result of receiving a notice of removal from her employing establishment on March 1, 2002. The Board has held that administrative or personnel matters are not compensable factors of employment unless the evidence discloses that there was error or abuse on the part of the employing establishment.⁶ In *Apple Gate*,⁷ also an emotional condition case, the Board held that letters of warning and letters of suspension for irregular attendance and being absent without leave were personnel matters and that emotional reactions to such matters did not constitute an injury sustained in the performance of duty. The Board finds that the February 26, 2003 notice of removal issued for appellant's irregular attendance and tardiness is a personnel matter and is not a compensable factor of employment. Appellant submitted no evidence to establish error or abuse on the part of the employing establishment in issuing the notice of removal. The Board also notes that the reduction of a disciplinary action does not itself constitute error or abuse, since appellant's notice of removal was reduced to a 30-day paper suspension. In *Michael Thomas Plante*,⁸ the Board held that the mere fact that personnel actions was later modified or rescinded did not, in and of itself, establish error or abuse. In *Richard J. Dube*,⁹ the Board held that the fact that the employing establishment reduced a disciplinary letter to an official discussion did not establish that the employing establishment erred or acted abusively when it issued the letters of warning. Appellant submitted no other evidence to establish error or abuse on the part of the employing establishment and did not submit any evidence in response to the Office's request for additional information. As appellant did not establish a compensable factor of employment and did not show error or abuse on the part of the employing establishment, it is unnecessary to address the medical evidence in this case.¹⁰

⁶ *Mary Margaret Grant*, 48 ECAB 696 (1997).

⁷ *Apple Gate*, 41 ECAB 581 (1990).

⁸ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁹ *Richard J. Dube*, 42 ECAB 916 (1991).

¹⁰ *Margaret S. Krzycki*, *supra* note 4.

The January 29, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member