

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES P. INZETTA and U.S. POSTAL SERVICE,
POST OFFICE, Oakdale, NY

*Docket No. 03-1899; Submitted on the Record;
Issued October 27, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition causally related to factors of his employment.

On February 6, 2003 appellant, then a 49-year-old letter carrier, filed a claim alleging that he sustained an emotional condition due to close monitoring of his work and harassment and discrimination by his supervisor.

By decision dated June 24, 2003, the Office of Workers' Compensation Programs denied appellant's claim for an emotional condition on the grounds that he failed to establish any compensable factors of employment. The Office noted that appellant had submitted information regarding incidents at work from 1993 to 1999, but these allegations had been the subject of previous claims and were, therefore, not considered in the current claim that involved incidents on and about February 4, 2003.

The Board finds that appellant has failed to establish that he sustained an emotional condition causally related to factors of his employment.

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.¹ 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

¹ 5 U.S.C. §§ 8101-8193.

particular environment or to hold a particular position.² 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.³ Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁴

In this case, appellant alleged that Kenneth Washington, the postmaster, at his duty station, stared at him and went through his assigned mail for several days and on February 4, 2003 told appellant that he was going to watch him deliver his mail route. However, monitoring an employee's job performance is an administrative function and there is insufficient evidence of record to establish that Mr. Washington erred or acted abusively in monitoring appellant's job performance. As noted above, actions of the employing establishment in administrative or personnel matters do not fall within coverage of the Act unless the evidence demonstrates that the employing establishment either erred or acted abusively. Therefore, this allegation is not deemed a compensable factor of employment.

Appellant also alleged that he was harassed on February 4, 2003 when Mr. Washington told him that he was adding an extra bundle of mail to his route, but he had to deliver the route within the same time period. He alleged that Mr. Washington said, "You will do it and I will come out and watch you." Appellant alleged that, when he told Mr. Washington that he could not carry another bundle of mail, Mr. Washington stated: "You will do it." Appellant stated that he told Mr. Washington that 10 years previously, when George Saunders was his supervisor, the employing establishment tried to add an extra bundle of mail to the route and it required more than one additional hour to deliver the route. He alleged that he had been diagnosed with post-traumatic stress syndrome in 1998 and became nervous when he saw Mr. Saunders talking to Mr. Washington several days prior to February 4, 2003.⁵

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 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

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁵ Appellant alleged that Mr. Saunders was found guilty of harassment in 1999 by a federal court and was transferred to another duty station for that reason. He stated that he was afraid that Mr. Saunders was telling his supervisors how to "come after" him.

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).

In a statement dated February 4, 2003, a coworker indicated that on that day Mr. Washington spoke to appellant about his route and then appellant left to deliver the mail, but returned approximately 45 minutes later, stating that he was nervous and stressed and appellant then went home. This statement is lacking in specific details and is insufficient to establish that Mr. Washington harassed or discriminated against appellant on February 4, 2003.

In statements dated February 4 and April 3, 2003, Mr. Washington noted that on February 4, 2003 appellant approached him about some problems with undelivered mail and Mr. Washington advised that he would look into the matter. Later, when he observed that appellant had not left to deliver his route, Mr. Washington told him that he would not change his route until a route evaluation had taken place and to continue doing his work. Mr. Washington stated that appellant returned after about 35 minutes indicating that he did not feel well and left work. Mr. Washington denied that he told appellant on February 4, 2003 that he was going to change his route by adding an additional bundle of mail or said "You will do it and I will come out and watch you." He noted that, when Mr. Saunders visited the workplace he was there to discuss an employee who had requested a transfer and to perform training. Mr. Washington indicated that appellant was not the subject of any conversation during Mr. Saunders' visits.⁸

In a statement dated April 3, 2003, Mr. Saunders denied that he ever harassed appellant or was transferred by the employing establishment for harassment. He stated that he voluntarily left for another job in 2001. Mr. Saunders visited appellant's duty station because he had been asked to provide training to a supervisor.

The Board finds that the evidence of record fails to establish that the employing establishment harassed or discriminated against appellant. The employing establishment denied appellant's allegations of harassment and discrimination and appellant submitted insufficient evidence to establish his allegations as factual. Therefore, the harassment and discrimination allegations are not found to constitute compensable employment factors in this case.

As appellant has not established any compensable factors of employment, the Board will not address the medical evidence.⁹

⁸ Mr. Washington noted that appellant was not present on two days Mr. Saunders visited because these were nonscheduled days for him.

⁹ *Margaret S. Krzycki*, 43 ECAB 496 (1992). In its June 24, 2003 decision, the Office properly found that it did not need to consider information submitted by appellant regarding claimed incidents at work from 1993 to 1999 as these allegations had been the subject of previous claims and, therefore, were not part of the current claim which focuses on incidents alleged to have occurred on and about February 4, 2003.

The June 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 27, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member