

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDOLPH P. ABBOTT and U.S. POSTAL SERVICE,
POST OFFICE, Roanoke, VA

*Docket No. 03-1851; Submitted on the Record;
Issued September 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On February 14, 2002 appellant, then a 55-year-old letter carrier, filed an occupational disease claim alleging that he sustained a stress-related condition while in the performance of duty. He claimed that management was trying to get him. Appellant did not stop work.

In a separate statement, appellant alleged that he was wrongfully issued a seven-day suspension after hitting a fire hydrant with his mail truck on October 31, 2000, which the employing establishment determined to be a preventable accident. He indicated that the seven-day suspension was later reduced to a one-year letter of warning. Appellant also alleged that he was wrongfully issued a 15-day suspension for using unauthorized overtime, which was later reduced to an official discussion. Additionally, he alleged that Terry Doss, a manager, and Billy Martin, the postmaster, harassed him in retaliation for having reported Mr. Doss for throwing away mail.

Appellant submitted a duty status report dated February 7, 2002, which noted that he was treated for insomnia and intermittent anxiety symptoms and advised that appellant could return to work on February 8, 2002. Appellant also submitted reports from Dr. Thomas L. Sarvay, a specialist in psychiatry, who advised that appellant was treated for anxiety and depression as a result of his current work situation. Dr. Sarvay diagnosed appellant with obsessive compulsive disorder, mild and generalized anxiety disorder.

The employing establishment submitted a statement from appellant's supervisor, James H. Turner, dated May 16, 2000, who indicated that appellant was involved in a fault accident when he failed to maintain proper clearance between his postal vehicle and a fire hydrant. Mr. Turner noted that appellant's allegations that management was spiteful and vindictive were unfounded. He advised that appellant had an extensive history of failing to perform his assigned job in a consistent manner. He noted that appellant's stress was self-

imposed and that appellant was not treated any differently than any other employee who failed to meet and follow postal policies and regulations. Mr. Turner noted that the suspension was proposed because appellant violated the written policies and regulations of the employing establishment. The request for discipline dated December 6, 2000 advised that appellant failed to observe all traffic regulations prescribed by law; failed to remain at the scene of the accident; and did not notify the local or state police of the accident.

In a decision dated July 29, 2002, the Office of Workers' Compensation Programs denied appellant's claim on the basis that appellant failed to establish that the injury occurred in the performance of duty.

Appellant requested an oral hearing, which was held on February 25, 2003. He testified that he was wrongly issued a 7-day suspension for a motor vehicle accident and a 15-day suspension for unauthorized overtime which was later reduced to a letter of discussion. Appellant submitted an Equal Employment Opportunity (EEO) complaint of discrimination, which alleged that he was discriminated against by Mr. Martin due to his religion, sex and age. The complaint also alleged that Mr. Martin was angry with appellant because he was involved in prior EEO complaints and was a union trustee and steward. The EEO complaint was dismissed by the employing establishment on June 7, 2001. On November 6, 2001 the EEO Commission issued a decision reversing the employing establishment's decision to dismiss appellant's claim and remanded the complaint for further processing. The employing establishment requested reconsideration of this decision, which the EEO Commission denied.

In a decision dated April 24, 2003, the hearing representative affirmed the Office's decision dated July 29, 2002.

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.¹ Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview 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

¹ *Kathleen D. Walker*, 42 ECAB 603 (1991).

² *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

deemed 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.³ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁴

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁵ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁶

Regarding appellant's claim that the employing establishment engaged in improper disciplinary actions by issuing him a 7-day suspension for hitting a fire hydrant and by issuing a 15-day suspension for using unauthorized overtime, these allegations fall into the category of administrative or personnel actions, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷ Absent evidence of error or abuse, any resulting emotional condition must be considered self-generated. In this case, the Board finds that the record fails to demonstrate error or abuse on the part of the employing establishment in instituting disciplinary action against appellant. Appellant's supervisor, Mr. Turner, submitted a statement dated May 16, 2000 which advised that appellant was involved in a fault accident when he failed to maintain proper clearance between his postal vehicle and a fire hydrant. He advised that the suspension was proposed because appellant violated the written policies and regulations of the employing establishment as he failed to observe all traffic regulations prescribed by law, he failed to remain at the scene of the accident and did not notify local or state police of the accident. While appellant admitted that he was involved in this accident, he asserted that the fire hydrant was placed in an unsafe location, and was later relocated by the City of Roanoke. However, appellant did not provide any evidence which substantiated this contention. Furthermore, the Board notes that the mere fact that the seven-day suspension for the motor vehicle accident was later reduced to a letter of warning, does not in and of itself, establish error or abuse.⁸ With respect to the 15-day suspension for using unauthorized overtime, the record includes very little information beyond appellant's allegation that the suspension was subsequently reduced to a letter of discussion. Again, this later fact, standing alone, does not establish error or abuse on the part of the employing establishment.⁹ Appellant has presented no corroborating evidence to support that the employing

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

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ *Id.*

⁶ *Id.*

⁷ *Janet I. Jones*, 47 ECAB 345, 347 (1996).

⁸ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁹ *Id.*

establishment either erred or acted abusively with regard to the above-noted disciplinary actions. Thus, appellant has not established that either incident represents a compensable employment factor under the Act.

Appellant further alleged that his manager, Mr. Doss, and the postmaster, Mr. Martin, harassed him and retaliated against him for filing previous EEO complaints as well as reporting them for throwing mail away. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁰ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹¹ In the present case, appellant's supervisor, Mr. Turner, noted that appellant's allegations that management was spiteful and vindictive were unfounded and that he was not treated any differently than any other employee who failed to meet and follow postal policies and regulations. General allegations of harassment are not sufficient and in this case appellant has not submitted sufficient evidence to establish that he was harassed by his supervisor.¹² Appellant provided no corroborating evidence, such as witness statements, to establish that he was harassed by Mr. Doss or Mr. Martin. Appellant also indicated that he filed an EEO complaint for harassment and discrimination. However, grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹³ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.¹⁴ In conclusion, the Board finds that appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty as alleged.¹⁵

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹³ *James E. Norris*, 52 ECAB 93 (2000).

¹⁴ The record does not include a final decision regarding appellant's EEO complaint.

¹⁵ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

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

Dated, Washington, DC
September 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member