

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS MERSCHEN and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

*Docket No. 97-553; Submitted on the Record;
Issued August 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an emotional condition in the performance of his federal employment.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof in this case.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employee's Compensation Act. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.¹

In cases involving emotional conditions, the Board has held that, when working conditions are related as factors in causing a condition or disability, the Office of Workers' Compensation Programs must first as part of its adjudicatory function make findings of fact regarding which working conditions are deemed compensable factors of employment and which working conditions are not deemed factors of employment. Only if appellant has alleged a

¹ *Lillian Cutler*, 28 ECAB 125 (1976); *Elizabeth Pinero*, 46 ECAB 123 (1994).

compensable factor of employment will the Office further review the medical evidence and evaluate the claim.²

In the present case, appellant a manual distribution clerk, filed a claim alleging that he had sustained stress at work because a supervisor, Ronda Foreacre, treated him differently than the other workers. Appellant further alleged that he was required to perform the duties of a level 6 position in addition to his level 5 duties, that he was refused the right to speak to a union steward, that he was continually asked to help other units complete their work even when his own work was not completed, appellant stated that he was scheduled to work 6 days a week with drop days, but that on several occasions his drop days were canceled.

The Office denied appellant's claim by decisions dated September 22, 1995 and August 26, 1996 and finalized August 27, 1996.

Appellant has essentially alleged that he was overworked because he was required to perform level 6 duties in addition to his level 5 duties; that he was required to assist with work in other units before his own work was completed; and that his drop days were rescheduled. Appellant has also alleged that his supervisor, Ms. Foreacre, performed her supervisory duties improperly in assigning his work duties, in denying him drop days and leave, and in not allowing him to speak with a union steward upon request.

Regarding the claim of overwork, the Board has held that overwork may be a compensable factor of employment.³ A claimant cannot meet his burden of proof by merely alleging overwork, rather the claimant must submit corroborating evidence supporting such claim. If the claimant substantiates with corroborating evidence that he did not have ample time to complete his duties, or that he was unable to complete the assigned duties due to complexity or due to lack of assistance, such allegation could be compensable.⁴ Appellant has not submitted the necessary evidence corroborating overwork. The employing establishment, in a letter from Ms. Foreacre, has rebutted appellant's allegations. The employing establishment stated that appellant never performed level 6 duties. The employing establishment also stated that depending upon mail volume appellant as well as his coemployees were asked to help with duties within another unit, however, such request would be made only if a unit could finish its own work. Ms. Foreacre explained that appellant was a part-time flexible clerk and was advised numerous times of his duties. She explained that if mail volume was normal and regular clerks manned the unit, all junior clerks would be sent to other operational areas such as primary letters, flats, sack racks, blue line, automation etc., and sometimes a junior would be used to breakup or sweep mail for other units that had heavier mail volumes or personnel shortages. The employing establishment also noted that transfer of employees between units was allowed pursuant to the collective bargaining contract. Appellant has not submitted any corroborating evidence to establish that he did not have time to complete his own duties or that he was unable to complete

² See *Sharon R. Bowman*, 45 ECAB 187 (1993).

³ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁴ *Id.*

all of his assigned duties due to lack of assistance. Appellant has therefore not met his burden of proof to establish that he was overworked.

Finally, regarding appellant's allegations that he disagreed with Ms. Foreacre's supervisory actions, appellant has not established the compensability of these allegations. Administrative and personnel matters are generally related to the employment, they are, however, functions of the employer and not duties of the employee.⁵ Thus the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁶ Appellant has not submitted any corroborating evidence that he was in fact required to perform duties of a level 6 position, or that his assignment of various duties as a flexible clerk was in any way in error or abusive. Appellant has also not submitted any evidence and has therefore not established that he was in fact improperly denied drop days.

Appellant has also alleged that he was not allowed to speak with his union steward. Mr. Foreacre has explained, however, that appellant did ask numerous times for a union representative and was always provided such. Ms. Foreacre stated that on the morning in question, after asked by appellant, she paged for a union steward but got no response. She then paged a little later for Chief Steward Rita Nelson, however, she was unable to see appellant at that time. The following night, Ms. Foreacre was able to contact union steward Angle Evans and have the steward speak to appellant. Again, appellant has not factually established that his supervisor handled her administrative duties regarding this matter unreasonably or in error. Appellant therefore has not established a compensable factor of employment pursuant to the Act.⁷

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ *Id.*

⁷ 5 U.S.C. § 8101 *et. seq.*

The decision of the Office of Workers' Compensation Programs dated August 26, 1996 and finalized on August 27, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 27, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member