

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAY DOOLITTLE and U.S. POSTAL SERVICE,  
POST OFFICE, Salem, OR

*Docket No. 98-1431; Submitted on the Record;  
Issued December 16, 1999*

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DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment.

On October 15, 1996 appellant filed a claim alleging that he sustained emotional stress as a result of "being harassed by another employee at work." By decision dated March 5, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established a compensable factor of employment. In a decision dated February 25, 1998, an Office hearing representative affirmed the March 5, 1997 decision.

The Board has reviewed the record and finds that appellant has not established an employment-related emotional condition in this case.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.<sup>1</sup> To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

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 illness has some connection with the employment but nevertheless does not come within the coverage

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>3</sup>

The Board notes that the February 25, 1998 decision of the Office hearing representative contains a complete recitation of the relevant facts and the evidence of record. The Board will not restate all of the facts, other than to summarize the relevant facts. Appellant's primary allegation is that a coworker at the employing establishment was intentionally tampering with mail that was part of appellant's delivery route. As appellant stated at the November 19, 1997 hearing, he believed, that over a period of time in 1995, a coworker had written "misdelivered" or similar language on mail before it had actually been delivered by appellant. In support of his allegation, he had submitted copies of 26 postmarked envelopes that contained writing which indicated that the item had not been delivered to the proper address. It is appellant's contention on appeal that the source of the handwritten comments does not matter; the critical factor is that the mail with handwritten comments was assigned to appellant and therefore concerns his regular or specially assigned duties.

It is evident, however, from appellant's own statements that the alleged emotional reaction resulted from his belief that someone at work was harassing him by tampering with his mail. It was not simply that there was mail assigned to appellant's route that had handwritten comments, but that someone was intentionally trying to harass him by writing "misdelivered" on the envelopes even before appellant had an opportunity to deliver them. While the Board agrees that the evidence does not have to identify the specific coworker, the evidence must show that it was a coworker in order to support appellant's allegation of harassment in this case.

In this respect the Board finds, as did the hearing representative, that the evidence is inconclusive as to whether a coworker was involved. The 26 pieces of evidence were sent by the employing establishment to a forensic analyst for examination, along with handwriting samples from appellant and two coworkers. In a January 15, 1997 report, forensic analyst S.C. Shimoda concludes one person (writer A) was responsible for the writing on four documents, a second person (writer B) was responsible for three documents and the remainder were from individual writers. The analyst stated, "I could not associate the notations" on any of the documents with the writing samples from appellant and two coworkers. The Board notes that appellant has submitted a report dated February 16, 1998 from forensic analyst James Green, who stated that there were "strong indications" that one of the two coworkers noted above had written the comments found on four documents (the same documents that Mr. Shimoda had identified with writer A).

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

Based on this evidence, it is reasonable to conclude that one writer was responsible for four of the envelopes and another writer responsible for three documents, with no conclusive evidence that either writer was a coworker. The forensic analysts appear to disagree as to whether “writer A” was a coworker and no firm conclusions can be drawn from this evidence. Accordingly, the Board finds the record does not establish that a coworker tampered with appellant’s mail, as alleged. In order for an allegation of harassment to give rise to a compensable disability, there must be probative evidence that the harassment did occur. Unsubstantiated allegations of harassment are not determinative of whether such harassment occurred.<sup>4</sup> Although appellant has attempted to show that someone was tampering with his mail, the evidence of record is simply not sufficient to substantiate the allegation of harassment in this case.

To the extent that appellant has alleged a reaction to what he believes was an inadequate investigation of his complaints by the employing establishment, the hearing representative properly found that no compensable factor had been established. Investigations are administrative functions of the employer and unless the evidence shows error or abuse by the employing establishment, do not constitute compensable work factors.<sup>5</sup> There is no evidence of error or abuse in this case. In addition, it is well established that the processing of workers’ compensation benefits bears no relation to a claimant’s regular or specially assigned duties.<sup>6</sup>

Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>7</sup>

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<sup>4</sup> See *Helen P. Allen*, 47 ECAB 141, 147 (1995).

<sup>5</sup> *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>6</sup> *George A. Ross*, 43 ECAB 346 (1991).

<sup>7</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated February 25, 1998 is affirmed.

Dated, Washington, D.C.  
December 16, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member