

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERTO V. GUTIERREZ and U.S. POSTAL SERVICE,  
POST OFFICE, Las Cruces, NM

*Docket No. 98-1954; Submitted on the Record;  
Issued February 11, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an emotional condition in the performance of duty on October 16, 1997.

On October 16, 1997 appellant, then a 37-year-old letter carrier, filed a claim alleging that, on that date, his postmaster caused him stress. Appellant stated, "deceased in the family, postmaster talk to me about my job first." The employing establishment advised that appellant was claiming stress due to being "challenged in reference to taking an additional day off" to attend a funeral. The record does not indicate that appellant stopped work.

In an October 29, 1997 report, Dr. T. Glenn Easter<sup>1</sup> noted that appellant demonstrated anxiety, which was stress related and had headaches that were related to myopia. He diagnosed "work-related stress disorder." Other medical reports from Dr. Easter diagnosed an anxiety reaction secondary to work-related stress. In these reports, Dr. Easter did not mention work conditions or incidents.

In an October 30, 1997 letter, an employing establishment compensation specialist advised the Office of Workers' Compensation Programs that, on October 14, 1997, appellant was on approved leave due to a death in the family that occurred at a location about 45 minutes away from the employing establishment. The specialist stated that, on October 15, 1997, appellant called to request an additional day of leave due to motor vehicle problems which delayed his return home. The specialist stated that appellant's supervisor approved the leave after informing appellant that the employing establishment was understaffed. On October 16, 1997 the specialist stated that a branch manager asked appellant "about what happened" with regard to appellant's use of unplanned leave on a day when the employing establishment was understaffed. The specialist related that appellant felt that the branch manager did not need to inquire as he had talked to his supervisor about attending the funeral.

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<sup>1</sup> Dr. Easter's medical specialty is unclear.

In letters dated December 2, 1997, the Office requested that appellant submit additional factual and medical evidence in support of his claim. The Office particularly asked appellant to provide a thorough description of the incident which he believed affected his condition.

Appellant submitted additional treatment notes and reports from Dr. Easter. This evidence did not address any factors or incidents in appellant's employment.

In a January 28, 1998 decision, the Office denied appellant's claim. The Office noted that appellant had not established a factual basis for his allegation and had not identified specific incidents alleged to have caused his condition.<sup>2</sup>

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 on October 16, 1997.

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 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>

To establish that an emotional condition was sustained in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>4</sup>

Although appellant has submitted medical evidence showing that he has an emotional condition, he has not submitted factual evidence identifying compensable employment factors or incidents alleged to have caused or contributed to the condition. The only statement provided by appellant, on his October 16, 1997 claim form, indicated that he felt stressed when a postmaster talked to him about his job immediately after he returned to work following an absence necessitated by a death in the family. On December 2, 1997 the Office requested that appellant

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<sup>2</sup> Following issuance of this decision and on appeal, appellant submitted new evidence. However, the Board cannot review new evidence on appeal as its regulations provide that its review shall be limited to the evidence that was before the Office at the time of its decision; *see* 20 C.F.R. § 501.2(c).

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

<sup>4</sup> *Blondell Blassingame*, 48 ECAB 130 (1996).

provide further explanation of the incidents that he believed were responsible for his condition. However, the record contains no further response from appellant regarding this.

Appellant has not established that his branch manager's discussion with him on October 16, 1997 represents a compensable factor of employment. The Board has held that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.<sup>5</sup> While appellant did not identify the nature of the discussion with the branch manager, the employing establishment, in its October 30, 1997 letter, indicated that the matter pertained to appellant's use of unplanned leave. The Board has held that reactions to leave matters do not constitute employment factors as they are administrative and personnel matters not related to an employee's regular or specially assigned work duties.<sup>6</sup> Such matters are not considered compensable employment factors in the absence of error or abuse by the employing establishment, or evidence that the employing establishment acted unreasonably.<sup>7</sup> Appellant has not shown that any aspect of the branch manager's discussion constituted an erroneous or abusive action. Instead, the employing establishment indicated that the branch manager sought to inquire as to why appellant had requested unscheduled leave at a time when the employing establishment was understaffed. There is no evidence showing that this was unreasonable.

As appellant has not established a compensable factor of employment substantiated by the record, it is not necessary to review the medical evidence.<sup>8</sup>

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<sup>5</sup> *Abe E. Scott*, 45 ECAB 164 (1993).

<sup>6</sup> *Beverly Diffin*, 48 ECAB 125 (1996).

<sup>7</sup> *See Frank A. Catapano*, 46 ECAB 297 (1994).

<sup>8</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The January 28, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
February 11, 2000

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member