

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EWITT WHITE and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 01-1471; Submitted on the Record;  
Issued March 12, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish his claim for an emotional condition causally related to his federal employment.

On November 30, 1998 appellant filed a claim alleging that he sustained an emotional condition causally related to his federal employment. In narrative statements, appellant alleged that he was subject to harassment and discrimination from his supervisor, Mr. Simmons, including disparate treatment and retaliation for filing Equal Employment Opportunity (EEO) claims.

By decision dated May 19, 1999, the Office of Workers' Compensation Programs denied the claim, finding that no compensable work factors had been established. In a decision dated March 13, 2000, an Office hearing representative affirmed the prior decision. By decision dated April 18, 2001, the Office denied modification of the prior decisions.

The Board finds that appellant has not met his burden of proof 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>

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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).

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>

The allegations in this case relate to appellant's treatment by his supervisor, Mr. Simmons. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>4</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>5</sup>

Appellant submitted witness statements regarding his claim. The witnesses report a difficult relationship between appellant and his supervisor, and offer an opinion that appellant was subject to disparate treatment. For example, in a November 5, 1999 statement, a coworker, Mr. Roman, stated that appellant's supervisor repeatedly paged appellant when he was gone, and he would not do this to other employees. On the other hand, in an undated statement received by the Office on January 25, 1999, Mr. Simmons stated that appellant was frequently away from his work area when he was needed and therefore he was paged.

The evidence of record is not sufficient to establish that appellant was subject to harassment, discrimination, retaliation, or unfair treatment. Although appellant indicated that EEO claims had been filed, there are no findings by the EEOC or other administrative body. The evidence of record does not contain reliable evidence of harassment or discrimination in this case.

With respect to specific disciplinary actions, such as a seven-day suspension and letter of warning in 1997, such administrative or personnel matters may be a factor of employment where the evidence discloses error or abuse by the employing establishment.<sup>6</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>7</sup> In this case, there is no probative evidence of error

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

<sup>4</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>5</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>6</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>7</sup> *Anna C. Leanza*, 48 ECAB 115 (1996).

or abuse by the employing establishment.<sup>8</sup> There is a witness statement dated February 8, 1999 from Ms. Wehrer, a supervisor, indicating that on February 28, 1998 she had a conversation with Mr. Simmons regarding appellant's medical documentation for sick leave. Ms. Wehrer reported that Mr. Simmons stated that he was going to "get that mother ----." There is, however, no reliable evidence establishing error or abuse in a specific administrative action. Ms. Wehrer indicated that she had provided a statement pursuant to an EEO complaint by appellant, but again the Board notes that there are no findings from the EEOC in the case record.

The Board accordingly finds that the evidence does not substantiate a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>9</sup>

The decision of the Office of Workers' Compensation Programs dated April 18, 2001 is affirmed.

Dated, Washington, DC  
March 12, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> The Board notes that appellant stated that his suspension was overturned because it was issued before a grievance decision had been issued. It is well established that the modification or rescission of a disciplinary action does not, in and of itself, establish error or abuse. See *Michael Thomas Plante*, *supra* note 6; *Richard J. Dube*, 42 ECAB 916 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment). The record does not contain a grievance decision finding error in an administrative action.

<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).