

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT KNOKE and U.S. POSTAL SERVICE,
POST OFFICE, Laguna Hills, CA

*Docket No. 98-46; Submitted on the Record;
Issued February 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained a traumatic injury in the performance of duty on March 4, 1996, as alleged.

On March 7, 1996 appellant filed a claim for a heart condition, high blood pressure, anxiety and tension which he attributed to a March 4, 1996 incident. On that date appellant stated that he called his supervisor to tell him that one-half hour of mail for Saturday, March 2, 1996, had not been delivered. Appellant stated that this supervisor "did not want to even hear my side of the story. He talked to me in a threatening way by saying it was my fault the mail was delayed. His tone of voice and demeanor was not professional." Shortly after this telephone conversation, appellant experienced chest pain and was taken by ambulance to a hospital emergency room, where he was treated and tested for high blood pressure, chest pain and an elevated heart rate.

By decision dated June 5, 1996, the Office of Workers' Compensation Programs found that the evidence failed to demonstrate that appellant's injury occurred in the performance of his duties. Appellant requested a hearing. By decision dated August 16, 1996, an Office hearing representative found that the case was not in posture for a decision. The Office hearing representative noted that appellant had filed a claim for a traumatic injury allegedly incurred on March 4, 1996 and also a claim for an occupational disease. Regarding the claim for a traumatic injury on March 4, 1996, the Office hearing representative found:

"Since the claimant has submitted two detailed statements ... clarifying his allegations regarding the events surrounding the March 4, 1996 incident (neither of which have been denied or confirmed by the employing establishment), and since there is affirmative medical evidence to support a finding that a medical condition was diagnosed which may be related to the March 4, 1996 incident, it must be found that the claimant has met his burden of proof in establishing fact of injury in the traumatic injury claim. With regard to the claim for traumatic injury, the Office must make findings of fact and further develop any evidence made necessary by the results of the findings of fact."

The employing establishment submitted copies of interviews conducted by its station manager on March 5, 1996 of the two supervisors who talked to appellant on the telephone on March 4, 1996. By decision dated October 28, 1996, the Office found that the evidence failed to establish that appellant sustained an injury in the performance of duty on March 4, 1996. Appellant requested a hearing, which was held on June 11, 1997. By decision dated August 14, 1997, an Office hearing representative found that the evidence was not sufficient to establish that appellant's supervisor acted abusively in his dealings with appellant on March 4, 1996.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the 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. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.¹

In the present case, appellant did not attribute his injury to such potential compensable factors as overwork or inability to perform his prescribed duties.² Rather, he attributed his injury to the manner in which his supervisor spoke to him on March 4, 1996 about undelivered mail. The reaction to the instruction itself would not be compensable, as the Board has held that work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity by the supervisor.³ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁴

The Board finds that the evidence does not establish that appellant's supervisor acted abusively toward appellant on March 4, 1996.

In an attachment to his claim form, appellant stated that on March 4, 1996 his supervisor spoke to him about undelivered mail in a threatening and nonprofessional manner. In his response to the Office's April 19, 1996 request for further information on his claim, appellant characterized the supervisor's tone and demeanor during the March 4, 1996 telephone conversation as "terrifying." At a hearing held before an Office hearing representative on June 11, 1997, appellant testified that on March 4, 1996 his supervisor accused him of delaying the mail, a serious offense, and that the supervisor yelled at him over the telephone. However, mere perceptions of error or abuse are not sufficient to establish entitlement to compensation.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *See Georgia Kennedy*, 35 ECAB 1151 (1984).

³ *Michael L. Malone*, 46 ECAB 957 (1995); *Rudy Madril*, 45 ECAB 602 (1994).

⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993).

To discharge his burden of proof, appellant must first establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.⁵

The evidence does not substantiate appellant's allegation of abuse by his supervisor on March 4, 1996. The employing establishment submitted copies of interviews conducted by its station manager on March 5, 1996 of the two supervisors who talked to appellant on the telephone on March 4, 1996. Appellant's supervisor's statement reflects a conversation on March 4, 1996 about appellant's delivery of mail. The other supervisor who was present during the telephone conversation on March 4, 1996 stated that she heard appellant's supervisor ask appellant, "[W]hat is this I hear about you leaving mail in the Villas on Saturday" and tell him to deliver the mail in question in less than 30 minutes. The statements of this supervisor do not support appellant's allegations of harassment or verbal abuse by appellant's supervisor in the March 4, 1996 telephone conversation.

Appellant has submitted evidence, in the form of statements from coworkers, that this particular supervisor acted on other occasions in a bullying and intimidating manner. Appellant also submitted copies of resolutions of grievances against his supervisor, two of which assured that this supervisor would "maintain a mutual respect atmosphere with all employees and that subsequent violations may result in monetary remedy." A third resolution of a grievance stated that appellant's supervisor would be given communication skill training deemed appropriate by the postmaster. While this evidence lends some support to a proposition that appellant's supervisor may have been abusive in some of his dealings with employees, it does not directly support that appellant's supervisor was abusive to appellant in the March 4, 1996 telephone conversation. Appellant has not supported such abuse with reliable and probative evidence.

The decision of the Office of Workers' Compensation Programs dated August 14, 1997 is affirmed.

Dated, Washington, D.C.
February 2, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ *Janet I. Jones*, 47 ECAB 345 (1996).