U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA L. BINKLEY and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, Ohio

Docket No. 96-811; Submitted on the Record;
Issued January 13, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing an emotional condition arising in the performance of duty; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits of her claim pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On June 22, 1995 appellant, then a 45-year-old postal clerk, filed a claim alleging that she developed anxiety reactions, including insomnia, nervous stomach, panic and depression, following harassment at work by her supervisor. By decision dated October 4, 1995, the Office denied appellant's claim on grounds that the evidence of record failed to establish that appellant's emotional condition arose in the performance of duty. In a decision dated November 27, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and insufficient to warrant review of the prior decision.

The Board finds that appellant failed to met her burden of proof in establishing an emotional condition arising out of the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1]

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation

[1] *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

giving rise to an emotional condition which will be covered under the Act. Where disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from factors such 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. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[2] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[3] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[4]

In the present case, the Office properly found that none of the factors identified by appellant were compensable factors of employment. In a supplemental statement for her claim, appellant cited three incidents which she believed caused her emotional anxiety condition. She indicated that she was working on the "DBCS" machines when her supervisor, Steve Owston, began pulling out mail for zones five and six. She reported that she advised him that he was performing "clerks work" and he replied that he did not care and she should file a grievance. When she asked him to stop again, Mr. Owston "swatted" at her. Appellant stated that this incident was reported to the Postmaster by the union president, Steve Bostick. The second incident was in relation to her assignment to teach the "PTF' how to run the DBCS machines. One of the PTF employees refused to take orders from appellant. This refusal was discussed with the employee involved, appellant and Mr. Owston. When the PTF employee continued to refuse to work with appellant, Mr. Owston pulled appellant off the machine she was working on and replaced her with another PTF employee. The final incident occurred on April 21, 1995. The DBCS machine was appellant's assigned duty area. However, Mr. Owston used a PTF employee in place of appellant on the DBCS machine. When appellant complained, she was advised to file a grievance. Appellant indicated that she left work angry and did not return until June 5, 1995. Appellant implied that Mr. Owston was taken off her tour of duty in relation to her complaints and was returned to work on September 5, 1995.

Mr. Owston responded to the Office's request for information regarding the alleged incidents and recalled three negative interactions with appellant. He reported that in September 1994, he was attempting to show another employee how to "riffle" mail when appellant "hollered" at him that he could not do that and got her union steward to complain. Mr. Owston stated that he attempted to explain what he was doing with the mail, but appellant became

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

[4] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd. on recon.*, 42 ECAB 566 (1991).

argumentative. Mr. Owston indicated that he had made a gesture against his waist meaning, "We can[no]t get anywhere arguing." He reiterated what he meant by the gesture when questioned the next day by the Postmaster. The second incident involved a discussion with appellant concerning her attendance review. He told her he would like to see improvement. The third incident occurred in April 1995 and involved his assignment of an employee to fill in for another employee who was late. Appellant was assigned to a different work area, working with an employee, Dane Krupp, with whom she had allegedly previously expressed an interest in working.

Appellant has alleged several incidents which she asserts constituted harassment. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.[5] Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.[6] Appellant failed to provide any such probative and reliable evidence in the instant case. Appellant has not provided specific dates or corroborating evidence for any of the incidents that allegedly caused her emotional condition. The only incident alleged by appellant that is addressed by Mr. Owston is the first incident where she told him he was doing "clerks work." However, Mr. Owston, indicated he was teaching another employee how to do his job. Appellant's complaints concerning the manner in which her supervisor performed his duties as a supervisor or the manner in which he exercised his supervisory discretion fall, as a rule, outside of compensable factors of employment.[7] This principle also applies to appellant's complaint about her reassignment to a different work area performing her usual duties. Her complaints are analogous to frustration over not being allowed to work in a particular job environment and are therefore not compensable. The other incidents alleged by appellant lack specificity as to time, date and place and are uncorroborated by supportive evidence from other employees, or other documentation. The Board notes that although appellant alleged that Mr. Owston was reprimanded for his conduct and implies it was due to conduct similar to that which she cited, there is no evidence of record which supports this allegation. Thus, her allegations are not substantiated and cannot met her burden of proof.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[8]

[5] *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[6] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[7] *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

[8] 20 C.F.R. § 10.138(b)(2).

Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[9] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[10]

Appellant submitted a statement from her psychologist which recommended that her schedule be changed, an offer of a limited-duty assignment for appellant dated September 6, 1995 and two letters by H. Owen Ward, Jr., Ph.D., a clinical psychologist. In one letter, Dr. Ward noted that Mr. Owston was being assigned to the same shift as appellant and advised the employing establishment that he would support appellant in any legal or grievance recourse that she sought. In the other letter, he related her emotional conditions to her supervisor. None of the evidence presented by appellant either substantiates the specific work factors and incidents alleged by appellant or provides additional work factors which would be compensable under the Act. Therefore, this evidence is not sufficient to warrant review of the prior decision.

The decisions of the Office of Workers' Compensation Programs dated November 27 and October 4, 1995 are hereby affirmed.

Dated, Washington, D.C.
January 13, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[9] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[10] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).