U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SENORA LEONARD and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, Mich.

Docket No. 96-2649; Submitted on the Record;
Issued September 17, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of her federal employment due to factors of her employment from June to December 30, 1994; (2) whether the Office of Workers' Compensation Programs properly exercised its discretion in denying appellant's request for hearing on August 13, 1996.

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof in this case.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity per se is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.[1]

In cases involving emotional conditions, the Board has held that, when working conditions are related as factors in causing a condition or disability, the Office must first as part of its adjudicatory function make findings of fact regarding which working conditions are deemed compensable factors of employment and which working conditions are not deemed

[1] *See Elizabeth Pinero*, 46 ECAB 123 (1994).

factors of employment. Only if appellant has alleged a compensable factor of employment will the Office further review the medical evidence and evaluate the claim.[2]

In the present case, appellant a letter carrier, stopped work in August 1993 due to bilateral elbow conditions. Appellant filed an occupational disease claim for the elbows, which is not before the Board in the present appeal.[3] Appellant was placed in a light-duty janitorial position in June 1994. Appellant thereafter filed this claim alleging that she had sustained stress due to actions of her supervisor and coworkers while in the performance of her light-work duties from June to December 1994. Appellant submitted medical reports to the record from James F. Zender, a licensed clinical psychologist, who diagnosed adjustment and depressive disorder. The Office denied appellant's claim by decision dated January 5, 1996 on the grounds that appellant had not established that she sustained an emotional condition in the performance of her federal employment. The Office denied appellant's application for review on June 12, 1996. On August 13, 1996 the Office denied appellant's request for hearing on the grounds that appellant had previously requested a reconsideration pursuant to 5 U.S.C. § 8128.

The Board finds that appellant has not alleged any factors of employment which are compensable pursuant to the Act.

Appellant has alleged that on August 9, 1994 she had a discussion with her supervisor during which her supervisor questioned her use of sick leave and inquired whether she was sorry she had become a janitor after having worked as a letter carrier. Appellant stated that she informed her supervisor that she liked her light-duty work as it paid well. Appellant indicated to her supervisor that she was not pleased with a female coworker as this coworker did the work of two people, which appellant thought made her look as if she was faking her injury. Appellant stated that in an August 16, 1994 meeting she spoke her mind by telling her supervisor and her coworkers that she felt they were trying to make her look like a "phony" because the female coworker had only taken two weeks off from work for a tendinitis claim. Appellant stated she told the coworker that she was a "tornado in a small package, an idiot and a moron." Appellant stated that her supervisor then told her that that was enough. Appellant also stated that her coworkers had complained during the week on August 9, 1994 that they had to train appellant to perform additional duties and that appellant had taken some of the easy duties away from them. On September 16, 1994 appellant stated the supervisor called a meeting with all of the employees to assign new duties. After the assignments the supervisor asked if everyone was "okay with the assignment" and everyone agreed the new assignments were all right. Appellant stated that the supervisor then turned to her and stated "I'm not sure where you are going with this injury, I do not know whether you have plans to return to work or not, you may never be able to sweep and mop anymore, and if that is the case, I will have to get rid of you because I do not have any permanent light-duty work for you." Appellant stated that she told her supervisor that it would not be fair if she was fired because she could not sweep or mop, and that her supervisor had responded that she would not be fired, but that she would have to be moved to

[2] *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

[3] The Office is also evaluating a different claim whether appellant sustained a recurrence of her accepted injury in 1994.

another office to meet her limitations. Appellant stated that on September 23, 1994 she had stopped to look at the letter carrier vacation board when her supervisor told her that the board was not her business as she was no longer a letter carrier. Appellant stated that she informed her supervisor that she was checking the board for her boyfriend who was a letter carrier. Appellant stated that on September 6, 1994 her boyfriend had called her at work. After the call, her supervisor asked whom she had been speaking with and then informed appellant that she had been on the phone seven minutes which cost the employing establishment money. Appellant stated that on September 9, 1994 she tried to tell her supervisor that she had been having a headache for four days, but he did not seem concerned. Appellant stated that she informed him that she would be taking off after she completed her immediate duties and completed her leave slip. Appellant noted that her supervisor stated that he did not care what appellant did. Appellant stated that on the same day, her supervisor had asked her not to collect bottles and cans from the trash anymore, to remove from the employing establishment premises. Appellant filed a grievance over the order not to collect cans and bottles from trash at work. Ultimately, a letter agreement was reached wherein it was stated that employees could be allowed to retrieve pop cans and bottles from the trash if through the course of dumping the trash a can or bottle was available. On September 13, 1994 appellant's supervisor talked to her about her absences and advised that she needed appellant to be present when scheduled to work. On September 24, 1994 appellant used sick leave and upon returning her supervisor questioned her absence indicating that her boyfriend had reported that they had a disagreement. Appellant was asked by her supervisor on October 4, 1994 to work the Columbus day holiday, appellant indicated that she did not wish to work as she had not placed herself on overtime list, and had already scheduled a class in real estate. Appellant contacted the union and it was decided that the overtime list would be completed before others would be called to work the holiday. On September 24, 1994 appellant was written up for irregular attendance. Her letter of warning was later reduced to a discussion by mutual agreement. Appellant stopped work on October 21, 1994. Appellant also alleged that on December 30, 1994, while on leave, she brought in paperwork regarding her leave and medical reports regarding her blood pressure and kidney condition. Appellant stated that her supervisor advised her that she would need a report regarding her tendinitis and medical documentation about working full duty when she returned from leave.

Appellant's allegations in this case do not concern her actual performance of job dutiees, but rather concern statements made or actions taken by her supervisor towards her. The Board has previously held that appellant's complaints concerning the manner in which her supervisor performed his duties as a supervisor or the manner in which the supervisor exercises supervisory discretion, fall, as a rule, outside the scope of coverage provided by the Federal Employees' Compensation Act.[4] Nonetheless, error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.[5]

[4] *Abe E. Scott*, 45 ECAB 164 (1993).

[5] *Id.*

Appellant has alleged many instances of error or abuse in this case, but appellant's own perceptions and feelings, in and of themselves, are not compensable. To establish entitlement to benefits, appellant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.[6] Although appellant indicated that she disagreed with a number of actions taken by her supervisor regarding assignments, use of leave or supervisory counseling, appellant has not established error in this case. The evidence of record indicates that appellant filed a grievance regarding the ability of employees to remove bottles and cans from trash; and that appellant contacted the union regarding the employers' use of an overtime list to determine holiday work schedules. The record indicates that these issues were resolved by mutual agreement. While such personnel actions may be upheld, reversed, or modified through various procedures such as arbitration or the grievance process, the settlement of labor management disputes through such processes does not, in itself, establish that the employing establishment's actions were either erroneous or unreasonable.[7] Appellant has not submitted any independent evidence to establish error in these matters. Finally, while appellant's letter of warning due to absence was reduced to a discussion, the mere fact that the employing establishment lessens or reduces a disciplinary action or sanction does not establish that the employer acted in an abusive manner towards the employee.[8] Appellant has not submitted the independent, probative evidence necessary to establish that her employer acted in error or abusively against her.

The Board also finds that the Office did not abuse its discretion in denying appellant's request for hearing.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing, states:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[9]

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.[10]

In the present case, the Office properly determined that appellant's request for hearing was made after a request for reconsideration. The Office also properly exercised its discretion

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

[7] *Barbara J. Nicholson,* 45 ECAB 803 (1994).

[8] *Richard J. Dube,* 42 ECAB 916 (1991).

[9] 5 U.S.C. § 8124 (b) (1).

[10] *Corlisia L. Sims,* 45 ECAB 172 (1994).

and determined that the issue could also be addressed by another request for reconsideration. The Office therefore did not abuse its discretion in this case by denying appellant's request for hearing.

The decisions of the Office of Workers' Compensation Programs dated August 13, June 12 and January 5, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 17, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member