U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY A. CORDLE and U.S. POSTAL SERVICE,
POST OFFICE, Midflorida, FL

Docket No. 97-727; Submitted on the Record;
Issued July 26, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Workers' compensation laws 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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

In the present case, appellant alleged that she sustained an emotional condition due to an incident on February 24, 1995 when her supervisor, Charlie Ricci, placed her on administrative leave. Appellant later alleged that her claimed condition was also caused by other employment incidents and conditions.[7] By decision dated March 29, 1995, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors and, by decision dated and finalized August 12, 1996, an Office hearing representative denied modification of the Office's March 29, 1995 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

In the present case, appellant alleged that on December 26, 1994, Mr. Ricci spoke to her for three and a half hours and criticized her for not contacting him from the hospital where she had been the prior week. Appellant alleged that on January 4, 1995, Mr. Ricci and another official questioned her about a hiring decision she had made in December 1994 and told her that she could lose her job. She indicated that on February 24, 1995, Mr. Ricci improperly placed her on administrative leave due to the alleged hiring impropriety in December 1994 and allowed her to drive home from work despite the fact that she was too upset to do so in a safe manner. Appellant alleged that when she was ordered in return to work in April 1996 her request for leave was wrongly denied, that on April 5, 1995 she was wrongly issued a proposed notice of removal in connection with the hiring impropriety in December 1994 and that on September 1, 1995 she was wrongly issued a letter of demotion in connection with the same matter. She claimed that Mr. Ricci made improper statements regarding her psychological treatment when he

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[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] Appellant filed another claim (No. A06-621574) regarding other allegations of misconduct by Mr. Ricci. By decision dated May 1, 1996, the Office denied this claim on the grounds that appellant did not establish any compensable employment factors. This claim is not the subject of the current appeal before the Board.

completed compensation forms and that he wrongly released financial and medical information to an insurance company.

Regarding appellant's allegations that the employing establishment improperly handled disciplinary and personnel matters, inadequately monitored safety matters and wrongly denied leave requests, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[8] Although the handling of disciplinary actions, evaluations and leave requests and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[9] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[10] Appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse with respect to the above-described matters. Appellant filed an appeal with the Merit Systems Protection Board of the disciplinary actions concerning the December 1994 hiring practice, but the record does not contain any resolution of that proceeding.[11] Appellant indicated that she filed a grievance in connection with her denied leave request, but the record also does not contain a resolution of that matter. The record contains a statement in which a coworker stated that appellant had been allowed to "leave the building in a state of hysterics," but the coworker did not provide the date of the incident or any further description of the matter. Thus, appellant has not established a compensable employment factor under the Act with regard to these administrative or personnel matters.

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. She alleged that during the December 26, 1994 meeting, Mr. Ricci was upset and stated that he could fire her, demote her or take away her pride. Appellant generally noted that Mr. Ricci would yell at her, belittle her and threaten her job. She also alleged that another supervisor, Ms. Keith, tried to embarrass her in front of other people, including an occasion when she criticized her clothing in the cafeteria of the employing establishment. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[12] However, for harassment or discrimination to give rise to a compensable disability

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[8] *See Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[9] *Id.*

[10] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[11] Appellant submitted additional evidence after the Office's last merit decision. However, the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant may wish to resubmit such evidence to the Office through the reconsideration process; *see* 5 U.S.C. § 8128; 20 C.F.R. § 10.138.

[12] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[13] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.[14] Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[15] Thus, appellant has not established a compensable employment factor under the Act in this respect.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[16]

The decision of the Office of Workers' Compensation Programs dated and finalized August 12, 1996 is affirmed.

Dated, Washington, D.C.
July 26, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

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[13] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[14] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[15] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[16] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).