

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALIEA L. WINFREE-ROBINSON and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 98-730; Submitted on the Record;
Issued November 26, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained an emotional condition in the performance of her federal employment.

In the present case, appellant, then a 35-year-old maintenance support clerk, filed a claim alleging that on January 18, 1996 she had sustained emotional stress caused by her supervisor's harassment. Appellant submitted a lengthy narrative statement describing a number of events occurring during her employment. Appellant's representative in a subsequent statement clarified that appellant's claim concerned one incident of alleged harassment which occurred on January 18, 1996 which involved a discussion with her supervisor, and that the other events were merely described to support a pattern of harassment.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated March 4, 1997, on the grounds that appellant had not established that she sustained an injury in the performance of duty. The Office denied appellant's application for review of the merits of the claim on October 14, 1997.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained an emotional condition in the performance of duty on January 18, 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 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. 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.¹

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, as part of its adjudicatory function, must first 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.²

In the present case, appellant alleged that she sustained an emotional condition as a result of harassment by her supervisor, Jerry Dossenback. Appellant explained that she was working at her desk on January 18, 1996 when her supervisor came out of his office and into her work area. Mr. Dossenback stopped at a coworker's, Greg Boehle's, desk and talked to him. Appellant stated that she then engaged her supervisor in conversation. Appellant stated that her conversation with Mr. Dossenback concerned two issues, her leave for depositions and her arrival time. Regarding the leave issue, appellant stated that she informed her supervisor that she had depositions for her lawsuit against the employing establishment scheduled for the end of the month and that she needed to know the type of documentation necessary for leave. Appellant stated that her supervisor yelled at her and that he accused her of previously requesting time off for depositions when she did not need such time off. Regarding her arrival time, she related that Mr. Dossenback kept yelling at her, he finally stopped yelling and turned to walk away, but then he turned back around and asked her why she was reporting to her work station late. Appellant stated that she asked him what he meant and that she then tried to explain that even though her shift began at 6:45 a.m., her radio duties did not begin until 7:10 a.m. In further explanation, appellant stated that between 6:45 a.m. and 7:10 a.m. she would either visit the tour two supervisor's office or sit outside the tour one supervisor's office to wait until her radio time, although on occasion she would visit the restroom or go to get some water. Appellant stated that her supervisor became very angry and told her that she needed to get a report from the other clerk before she began her radio duties and that he wanted her to come straight into the tool and parts area when she clocked in. Appellant stated that she tried to explain that there was no place for her to sit there and he once again became very, very irate and began to yell at her. Appellant stated that she asked him to get another chair for that area so that she would have someplace to sit, to which he responded that he did n[o]t have to get her a chair, as nothing in her job description required that she sit to perform her job. Appellant alleged that Mr. Dossenback then said "you just come in here and stand," he yelled and seemed to lose control. Appellant stated that she broke into tears and could not continue working. That same day she developed chest pain symptoms and was admitted to a hospital. The Board must initially review whether this alleged incident of employment is a compensable employment factor under the terms of the Act.

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance

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

² *Margaret S. Kryzcki*, 43 ECAB 496 (1992).

of her regular duties, these could constitute employment factors.³ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁴ In the present case, appellant's supervisor has acknowledged in a January 6, 1997 statement that he had a discussion with appellant on the day in question regarding leave issues and appellant's daily arrival at her work station. He has denied however that appellant was subjected to harassment. Supervisor Dossenback stated that this was an informal talk with an argumentative employee over her record of failing to report to her duty station once on the clock.

The record also contains a statement from coworker, Greg Boehle. In his statement dated November 19, 1996, Mr. Boehle reported that supervisor Dossenback had stopped at his desk on January 18, 1996 to ask him about an order he had turned in. When they finished their conversation appellant then asked Mr. Dossenback whether she could talk to him about a couple of things, he answered yes and walked over to her desk. Mr. Boehle stated that he heard appellant ask about some work related documentation and that he then heard the supervisor ask appellant why she was reporting to her work area late. Mr. Boehle stated that throughout the conversation neither the supervisor nor appellant were yelling or cursing at each other. He also noted that toward the end of the conversation appellant was very upset, nervous and crying.

The Board finds that appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor as a result of the incident in question. Appellant alleged that her supervisor interacted with her in a matter that constituted harassment, but she provided insufficient evidence, to establish that the incident in question was actually harassment. The Board notes that while Mr. Dossenback and Mr. Boehle have submitted statements that appellant and Mr. Dossenback did engage in a conversation with appellant on the day in question regarding leave issues and appellant's time of arrival at her duty station, both Mr. Dossenback and Mr. Boehle have indicated that no yelling or loud interaction occurred. Furthermore, the Board notes that appellant's Equal Employment Opportunity complaint regarding this claimed incident was denied on April 19, 1996.

As appellant has not established a compensable factor of employment pursuant to the Act, it is not necessary to evaluate the medical evidence of record.

³ *David W. Shirey*, 42 ECAB 783 (1991).

⁴ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

The decisions of the Office of Workers' Compensation Programs dated October 14 and March 4, 1997 are hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member