

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA R. JONES and U.S. POSTAL SERVICE,
EAST LAKE POST OFFICE, Birmingham, AL

*Docket No. 99-1451; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

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

On August 29, 1997 appellant, then a 28-year-old letter carrier, filed an occupational disease claim, alleging that she sustained an emotional condition in the performance of duty. Appellant stopped work on May 23, 1997 and returned to work on September 4, 1997.

By decision dated November 12, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she had not alleged any compensable factors of employment. In a letter dated November 18, 1997, appellant, through her representative, requested a review of the written record by an Office hearing representative. By decision dated April 21, 1998, the hearing representative affirmed the Office's November 12, 1997 decision. On July 18, 1998 appellant requested reconsideration of her claim. By decision dated December 8, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not warrant modification of its April 21, 1998 decision.

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.

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.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 5 U.S.C. §§ 8101-8193.

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

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 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.³ 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.⁴

In this case, appellant has alleged that her diagnosed major depressive disorder resulted from a number of employment incidents and conditions. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered factors under the terms of the Act.

Many of appellant's allegations of employment factors that caused or contributed to her emotional condition fall into the category of administrative or personnel matters. In *Thomas D. McEuen*,⁵ the Board held that an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered under the Act because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷

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

³ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *Id.*

⁵ See *supra* note 2.

⁶ See *Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *Id.*

The incidents and allegations made by appellant which fall into the category of administrative or personnel actions include: the processing of her request for veteran's preference in hiring; the assessment of her performance;⁸ the disposition of sick leave requests;⁹ her request for light duty¹⁰ and the assignment of her work.¹¹ In response to appellant's allegations, officials and supervisors with the employing establishment maintained that the agency had followed its proper procedures in determining her veteran's status prior to her hiring, requiring documentation for sick leave, assigning her work and providing her with light duty after the Office denied her claim for an employment-related injury.

The record contains a settlement of an Equal Employment Opportunity complaint filed by appellant concerning her transfer to a different job. However, the complaint was settled without a determination of fault by the employing establishment. The fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.¹² As appellant has not submitted any evidence of error or abuse by the employing establishment, she has not established a compensable factor of employment.

Appellant also attributed her emotional condition to harassment and discrimination by her supervisors. Actions of an employee's supervisor, which the claimant characterizes as harassment or discrimination, may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.¹³ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.¹⁴ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.¹⁵ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁶

Appellant alleged that her supervisor harassed her by waiting until late Friday to inform her that she had to work Saturday, constantly monitoring her movements and making her complete her route after dark on November 27, 1995.¹⁷

⁸ See *Effie O. Morris*, 44 ECAB 470 (1993).

⁹ See *William P. George*, 43 ECAB 1159 (1991).

¹⁰ See *Ruth C. Borden*, 43 ECAB 146 (1991).

¹¹ *Id.*

¹² *Mary L. Brooks*, 46 ECAB 266 (1994).

¹³ *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

¹⁴ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹⁵ See *William P. George*, *supra* note 9.

¹⁶ See *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁷ Appellant maintained that her route was in a high crime area.

In support of her contentions, appellant submitted a statement from a coworker, Michael Brown, who related that on November 27, 1995 a manager asked him to accompany appellant to complete her route. Mr. Brown stated that they finished the route in about 30 minutes and that he delivered the mail in the more unsafe areas. He also stated that once he gave appellant a part of his own route to complete, termed a split, which he felt was too difficult for her. Mr. Brown further maintained that management treated appellant differently than coworkers and that he felt this was motivated either by her race, sex or another personal reason.

In response, appellant's supervisor, Flenard McAlpine, related that appellant was treated in the same way as her coworkers. He stated that on November 27, 1995 appellant had not followed the proper procedure of calling the office when she realized that she could not complete her route but instead returned with the mail to the office. Mr. McAlpine stated, "[appellant] obviously had been dragging her feet' because by the volume of mail, she should have been able to deliver the mail in the specified time frame without returning undelivered mail to the office ... I instructed Mr. Brown to go help her so she would get back quicker." Mr. McAlpine further noted that appellant knew Mr. Brown's route well and it was the carrier who "pulls down the mail and gives off the splits, not the supervisor."

The Board finds that appellant has not supported her allegations of harassment and discrimination with sufficient probative evidence. While appellant alleged that supervisors engaged in actions, which she believed constituted harassment and discrimination, she has not provided sufficient corroborating evidence. Mr. Brown generally stated that management treated appellant differently than coworkers but did not provide any specific examples. Mr. Brown's statement is insufficient to establish that appellant's supervisor harassed and discriminated against her by requiring her to complete her route, with assistance, on November 27, 1995 or allowing her to work a split on Mr. Brown's route. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant further alleged that her supervisor assigned her routes which she could not timely complete and refused to provide her assistance. The Board has recognized that, claims of overwork do relate directly to the performance of regular or specially assigned duties and may give rise to a compensable factor of employment.¹⁸ However, as with all allegations, overwork must be established on a factual basis. Appellant's supervisor indicated that similarly situated employees generally had harder routes than appellant and that the carrier who currently worked her old route had no difficulty completing the assignment. He further stated that appellant was "a good carrier and did a good job and would finish her route early when she wanted to." Appellant has not submitted any evidence corroborating her allegation that the work activity required in her position exceeded the normally established requirement within a specific time period.

¹⁸ *Frank A. McDowell*, 44 ECAB 522 (1993).

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.¹⁹

The decisions of the Office of Workers' Compensation Programs dated December 8 and April 21, 1998 are hereby affirmed.

Dated, Washington, DC
December 7, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁹ 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).