U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LETICIA PEREZ and U.S. POSTAL SERVICE,
PLANETARIUM POST OFFICE, New York, NY

Docket No. 99-40; Submitted on the Record;
Issued October 11, 2000

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On March 4, 1997 appellant, then a 35-year-old distribution window clerk, filed a claim for an emotional condition which she attributed to incidents on March 3, 1997, when she was denied a break or lunch period for 6 hours and 45 minutes and was verbally harassed when trying to go to the bathroom. On the reverse of the claim form appellant's supervisor, Victor Matalon, denied that appellant was denied a request to go to the bathroom and also noted that he instructed her to go to lunch at 11:00 a.m., within five hours of the beginning of her work shift at 6 a.m. He noted that her work shift was 6:00 a.m. to 2:30 p.m.

In a note dated March 3, 1997, appellant stated that she asked Mr. Matalon at 8:30 a.m. when she could take a break and he told her that she could not take a break until processing of the box section mail was completed. She alleged that she worked 6 hours and 45 minutes without a break and that she did not go to lunch until 12:45 p.m.

In a memorandum dated March 7, 1997, Mr. Matalon stated that on March 3, 1997 appellant asked at 8:15 a.m. when she could take a break and was told that box section mail was committed to the customers by 10:00 a.m. and she should complete this task before taking a break. Mr. Matalon stated that appellant asked for assistance, and he assigned Sherry Cayson to help her. Ms. Cayson stated in a note dated March 13, 1997 that she and appellant finished boxing the mail by 10:45 a.m. and that she returned to her original assignment.

At 11:00 a.m. Mr. Matalon instructed appellant to take her lunch break and she nodded in the affirmative. Mr. Matalon noted that he saw appellant talking to her husband in the building lobby at 11:30, which indicated to him that she was on her lunch period. He denied that appellant had requested a bathroom break or that he had verbally harassed her. Mr. Matalon added that on the afternoon of March 3, 1997, the day before appellant filed her compensation

claim, she had received a letter of warning for a previous infraction in February 1997, which involved leaving her place of assignment without permission, nonperformance of duties and being disrespectful to a supervisor.

In a note dated March 10, 1997, Dr. Louis O. Pupo, appellant's attending physician, stated that appellant was under his care for gastritis secondary to an anxiety disorder due to pressures placed on her at work. He recommended that she take two weeks' leave.

In a letter dated April 8, 1997, Iris Cancel, a coworker, stated that on March 3, 1997 appellant related that she had been told she could not take a break until the mail in the box section had been processed and that she complained of being dizzy and hungry.

In a note dated April 8, 1997, coworker Segundo Camacho stated that Mr. Matalon had harassed appellant, had constantly paged her and had spoken to her in an abusive manner.

In a statement dated April 8, 1997, coworker Eileen Campos related that on March 3, 1997 she heard Mr. Matalon tell appellant that she must finish boxing the mail before she could take a break or go to lunch. She stated that appellant went to the bathroom and Mr. Matalon paged her at that time and yelled at her when he saw her.

In a statement dated April 16, 1997, appellant stated that on March 3, 1997 she spoke to her husband for approximately three minutes when he asked her for the mail from their personal mailbox because he had forgotten his key. She stated that she was not on her lunch period or a break at that time and did not go to lunch until 12:45 p.m. She alleged that she was denied a request to go to the bathroom.

In a report dated April 29, 1997, Dr. Pupo related that on March 3, 1997 appellant complained of severe abdominal cramps, vomiting, and diarrhea and was upset and alleged that she had been harassed at work that day and was not allowed to take a break or lunch period and that this was the culmination of constant harassment from Mr. Matalon.

In an undated letter received by the Office of Workers' Compensation Programs on April 30, 1997, Joel Schreck, a union representative, stated that on February 28, 1997 he observed Mr. Matalon page appellant twice and then chastise her in an abrasive manner.

By decision dated May 23, 1997, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to establish that she had sustained an emotional condition causally related to compensable factors of her employment.

By letter dated May 13, 1998, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

By decision dated June 16, 1998, the Office denied modification of its May 23, 1997 decision.

The Board finds that appellant has not met her burden of proof to establish 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 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 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, 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 this case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant's allegations that the employing establishment issued unfair disciplinary letters and unreasonably monitored her activities at work, concern administrative or personnel matters

[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 (1987).

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

[5] *See Margaret S. Krzycki*, 43 ECAB 496 (1992); *Norma L. Blank*, 43 ECAB 384 (1992).

[6] *Id.*

and are unrelated to the employee's regular or specially assigned work duties; thus, they do not fall within the coverage of the Act.[7] Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[8] 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.[9] In this case, there is insufficient evidence that the employing establishment erred or acted abusively in the handling of administrative and personnel matters concerning appellant.[10] Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of her supervisor Mr. Matalon contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[11] However, for harassment or discrimination to give rise to a compensable disability 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.[12]

In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted evidence sufficient to establish that she was harassed or discriminated against by her supervisors.[13] She alleged that on March 3, 1997 she was denied a break or lunch period for 6 hours and 45 minutes after commencing work at 6 a.m. and was verbally harassed by Mr. Matalon when she tried to go to the bathroom. Appellant did not indicate what Mr. Matalon said to her when she allegedly asked to go to the bathroom. Mr. Matalon denied that appellant asked for a bathroom break or that he harassed her about taking a bathroom break. He stated that he instructed appellant to take her lunch break at 11:00 a.m. and she nodded in the affirmative indicating that she would take lunch then. When he saw her at 11:30 a.m. talking to her husband who was in the public lobby area, he believed that she was on her lunch break. Although appellant alleged that she did not take lunch until 12:45,

[7] *See Michael Thomas Plante*, 44 ECAB 510 (1993).

[8] *Id.*

[9] *Id.*

[10] The Board notes that appellant submitted with her appeal a November 28, 1997 arbitration decision concerning Ms. Campos. The Board's review on appeal is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). As this arbitration decision was not in the record when the Office issued its final decision on June 16, 1998, the Board cannot review this evidence.

[11] *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

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

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

there is no evidence that Mr. Matalon insisted that she not take her lunch period until 12:45. It appears that appellant was advised that she could go to lunch at 11:00 a.m. but chose not to take lunch until 12:45.

Appellant submitted witness statements from coworkers in support of her claim of harassment. In a letter dated April 8, 1997, Ms. Cancel, a coworker, stated that on March 3, 1997 appellant related that she had been told she could not take a break until the mail in the box section had been processed and that she complained of being dizzy and hungry. However, this witness did not indicate any personal knowledge of appellant's allegation that she was denied a break or lunch period until 12:45 or that she was harassed about a request for a bathroom break.

In a note dated April 8, 1997, coworker Mr. Camacho stated that Mr. Matalon had harassed appellant. He stated that Mr. Matalon constantly paged her name and had spoken to her in an abusive manner. However, he failed to provide specific details such as dates of harassment incidents or what was said when Mr. Matalon spoke to appellant. Regarding Mr. Matalon's paging of appellant, it is not unreasonable for a supervisor to page an employee who is absent from a work station. Mr. Segundo's statement does not establish that Mr. Matalon harassed appellant with his paging or verbally abused her.

In an undated letter received by the Office on April 30, 1997, Mr. Schreck, a union representative, stated that on February 28, 1997 he observed Mr. Matalon page appellant twice and then chastise her in an abrasive manner. However, appellant did not attribute her claimed emotional condition to an incident on February 28, 1997. Further, Mr. Schreck did not specify what Mr. Matalon said to appellant that could be considered abusive.

Coworker Ms. Campos stated that on March 3, 1997 she heard Mr. Matalon tell appellant that she must finish boxing the mail before she could take a break or go to lunch. She stated that Mr. Matalon had been following appellant's every move, paged her through out the building and yelled at her when he saw her. However, she did not state what Mr. Matalon said to appellant when he allegedly yelled at her, nor did she provide any details of these incidents. Thus, her general statement regarding the events of March 3, 1997 is of diminished probative value. Considering all the evidence of record, there is insufficient evidence to establish that the incidents alleged by appellant to have occurred on March 3, 1997 constitute error or harassment by her supervisor. Thus, appellant has not established a compensable employment factor under the Act regarding the alleged incidents on March 3, 1997.

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.[14]

[14] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 5.

The June 16, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 11, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member