U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY L. LOGAN and U.S. POSTAL SERVICE,
POST OFFICE, Lynwood, CA

Docket No. 99-1597; Submitted on the Record;
Issued October 23, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of duty as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's January 21, 1999 request for reconsideration on the grounds that her request was insufficient to warrant a merit review of the claim.

On August 6, 1998 appellant, then a 36-year-old letter carrier, filed a notice alleging that she sustained "post-traumatic anxiety, panic attacks, major depression, skeletal pain, elevated blood pressure, skin rash," and "mania" due to work factors on or before April 24, 1998.[1] The claim form indicates that appellant stopped work on April 6, 1998 due to an August 14, 1997 lumbar sprain and did not return.

In an attached statement, appellant attributed the claimed conditions to April 3 and 6, 1998 disciplinary meetings.[2] She alleged that on April 3, 1998, supervisors LeDell Loyd, Donald Williams and postmaster Don Pitcher accused her of deliberately injuring herself. Mr. Pitcher allegedly pointed his finger at appellant, stating that she was "disruptive" and a

---

[1] Appellant filed 10 prior compensation claims for various injuries or conditions occurring on the following dates: June 19, 1991 (Claim No. 13-0953798); January 3, 1994 (Claim No. 13-1035412); March 9, 1994 (Claim No. 13-1039569); September 30, 1994 (Claim No. 13-1062715) for an anxiety state; September 11, 1996 (Claim No. 13-1109328) for a lumbar sprain; April 2, 1997 (Claim No. 13-1132085) for left foot, right knee and lower back pain; August 14, 1997 (Claim No. 13-1144776) for a lumbar sprain; March 3, 1998 (Claim No. 13-1157511) for left shoulder, knee and spine pain; April 3, 1998 (Claim No. 13-1174608) for stress, anxiety and panic attacks; July 11, 1998 (Claim No. 13-1169755) for constipation, diarrhea and hemorrhoids. None of these claims are before the Board on the present appeal.

[2] The record contains a May 1, 1997 letter of warning, charging appellant with "unsatisfactory work performance -- failure to work in a safe manner," and an August 7, 1997 notice of a seven-day suspension for failing to deliver "30 minutes of mail" on August 6, 1997. Appellant did not allege that either of these two disciplinary letters caused the claimed conditions.

"disgrace to the [employing establishment]," commenting to Mr. Williams and Mr. Loyd that he "knew what they went through" in dealing with her. Appellant refused to answer questions and requested union representation. Mr. Pitcher then called the union office and rescheduled the meeting for April 6, 1998 to allow a union steward to attend. At the April 6, 1998 meeting, with a steward in attendance, Mr. Pitcher allegedly commented that he was "upset" at the April 3, 1998 meeting, but denied calling appellant a disgrace. After the April 6, 1998 meeting, Mr. Loyd issued appellant a letter of warning charging her with "working unsafe and not following instructions."[3] Appellant also alleged that her supervisors refused to process her claim forms in a timely manner, that Mr. Loyd told her on March 5, 1998 that the employing establishment "was going to try to fire [her] because of [her numerous] accidents," and that Mr. Loyd did not want appellant in her regular position due to "constantly receiving overpayment demands from injury compensation" and the "verbal abuse" that appellant "would receive from other carriers."

In October 30, 1998 letters, the Office advised appellant of the type of medical and factual evidence needed to establish her claim, including a narrative report from her physician explaining how and why the alleged employment factors would cause the claimed conditions. The Office also requested that the employing establishment comment on appellant's allegations.

In a November 17, 1998 letter, Mr. Pitcher stated that appellant was asked to attend the April 3, 1998 "Accident Repeaters Meeting" as she had "ten (10) accidents in the past five (5) years." Mr. Pitcher admitted stating at the April 3, 1998 meeting "I see what you go thr[ough]" to Mr. Loyd and Mr. Williams, but denied calling appellant a "disgrace" or pointing a finger at her. Mr. Pitcher noted that appellant had been assigned light duty within her prescribed work limitations at another station, matching post office box keys to locks.[4]

In a November 25, 1998 letter, Mr. Loyd noted that Mr. Pitcher and appellant exchanged "words" at the April 3, 1998 meeting, but could not recall "exactly what was said." Mr. Loyd noted issuing appellant the letter of warning on April 6, 1998 after she admitted standing "'very close to the door' [in March 1998] while it was closing."[5]

By decision dated December 8, 1998, the Office denied appellant's claim on the grounds that she had not established that the claimed emotional condition was sustained in the performance of duty. The Office found that appellant failed to substantiate any harassment at the April 3 and 6, 1998 meetings, noting that Mr. Pitcher and Mr. Loyd's statements substantially

[3] The record contains the April 3, 1998 letter of warning, issued for "unsatisfactory work performance -- failure to work in a safe manner," and "failure to follow instructions," as appellant was standing too close to a swinging door, attempted to prevent the door from striking her, causing her knee to give way.

[4] In a November 17, 1998 letter, Mr. Williams stated that on April 3, 1998, appellant refused to answer until a union representative was present. At the April 6, 1998 interview, appellant answered the questions posed. Following the second meeting, appellant was issued a letter of warning.

[5] In a December 1, 1998 letter, appellant noted that she had recently reconciled with her husband and that her son was diagnosed with diabetes in October 1996. She noted that neither of these were "stresses." Appellant asserted that employment-related "abuse" necessitated her treatment by a gynecologist, "orthopedic surgeon, psychologist, psychiatrist" and a family practitioner."

disagreed with her recollections. The Office accepted that Mr. Pitcher stated in the April 3, 1998 meeting "I see what you go through" to Mr. Loyd and Mr. Williams. The Office further found that appellant's "reactions to the April 3 and 6, 1998 meetings," the letter of warning, and overpayment demands were "reactions to administrative matters" not within the coverage of the Federal Employees' Compensation Act and that no error or abuse had been established. The Office further found that appellant had not established that Mr. Loyd told appellant she was going to be fired, or that he did not want her at her regular duty station. The Office further found that appellant's reaction to her light-duty assignment constituted a desire for a different job and was not considered to be in the performance of duty. The Office noted that appellant had not submitted any medical evidence.

Appellant disagreed with this decision and in a January 21, 1999 letter, requested a review of her case on the merits.[6] She submitted additional evidence.

In an October 30, 1998 work absence slip, Dr. Philip M. Carman, an attending clinical psychologist, checked a line indicating that appellant was totally disabled, diagnosed "major depression" and held appellant off work until February 15, 1999.

Appellant also submitted two August 28, 1998 grievances, both labeled "unresolved." The first alleges that the April 3, 1998 letter of warning was improper as appellant was not allowed union representation in the April 3, 1998 "investigative" meeting. The second alleges that appellant's light-duty assignment was inappropriate, and required a change of duty station and schedule, that the employing establishment refused to provide or timely process appellant's compensation forms, that she was refused access to a union steward on March 31, 1998 and that she was "threatened, harassed, and treated unprofessionally" on unspecified dates.

By decision dated February 9, 1999, the Office denied appellant's request on the grounds that the evidence submitted in support thereof was "of an immaterial nature" insufficient to warrant a merit review of the December 8, 1998 decision. The Office found that the grievance documents did not establish error or abuse by the employing establishment that would bring those matters under the coverage of the Act and were, therefore, irrelevant. The Office reiterated that as the employment factors appellant alleged were not compensable, it was irrelevant "whether a medical condition has been caused by said factors."

Regarding the first issue, the Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

In this case, appellant alleges that she sustained a disabling emotional condition due to factors of her federal employment. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. A claimant's perceptions and feelings regarding work factors, in the absence of corroborating evidence, are not compensable.[7] When working conditions are alleged as factors

[6] Appellant noted that "[m]edical documentation requested, to follow." However, appellant did not submit additional medical evidence from January 21, 1999 through the issuance of the Office's February 9, 1999.

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

in causing 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.[8] When a claimant fails to implicate a compensable factor of employment, as in this case the Office should make a specific finding in that regard.

Appellant attributes her claimed emotional condition, and various physical problems, to April 3 and 6, 1998 accident repeater interviews and an April 3, 1998 letter of warning. However, reactions to disciplinary actions taken by the employing establishment are not considered compensable factors of employment.[9] The Board has found that while administrative or personnel matters, such as disciplinary proceedings, are not generally related to the duties of the employee, they 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] In this case, the record demonstrates that appellant filed 11 compensation claims from 1991 to August 6, 1998. Therefore, the Board finds that it was not unreasonable for the employing establishment to require appellant to attend an accident repeater interview on April 3 and 6, 1998, or to issue her the April 3, 1998 letter of warning for standing too close to a swinging door, resulting in an injury. The interviews and letters of warning constitute normal supervisory functions under the facts of this case.

Appellant also alleged that at the April 3, 1998 interview, Mr. Pitcher pointed his finger at her and called her a disgrace. While the Office found in its December 8, 1998 decision that these incidents were not corroborated by the written statements of Mr. Pitcher, Mr. Loyd and Mr. Williams, the Office found that Mr. Pitcher did remark to Mr. Loyd and Mr. Williams that he "knew what [the supervisors] went through" in dealing with appellant. The question is whether that remark constituted compensable abuse. While the Board has recognized the compensability of verbal altercations of abuse in certain circumstances,[11] this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[12] The mere fact that Mr. Pitcher commented to appellant's supervisors that he "knew what [they] went through" in dealing with appellant, when appellant refused to answer his questions, does not warrant a finding that his actions amounted to verbal abuse.[13] Consequently, appellant has not established that Mr. Pitcher's remark is a compensable factor of employment.

[8] *See Barbara Bush*, 38 ECAB 710 (1987).

[9] *Daryl R. Davis*, 45 ECAB 907 (1994).

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

[11] *Harriet J. Landry*, 47 ECAB 543, 546 (1996).

[12] *Id.* at 547.

[13] *See Carolyn S. Philpott*, 51 ECAB ___ (Docket No. 98-760, issued November 18, 1999).

Regarding appellant's reaction to her light-duty job assignment, which necessitated a change of work schedule and duty station, the Board has held that disabling conditions resulting from an employee's desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[14]

Appellant also alleged that Mr. Loyd, her supervisor, told her on March 5, 1998 that she would be fired due to her numerous accidents and that she was administratively burdensome due to her many claims. However, the Office found in its December 8, 1998 decision that appellant had not established these incidents as factual. Arguendo, fear of job loss is not compensable.[15]

Thus, appellant has failed to establish any compensable factor of employment.

The Board further finds with respect to the Office's December 8, 1998 decision denying reconsideration, that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[16] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for review of the merits.[17]

In this case, in support of her reconsideration request, appellant submitted two August 28, 1998 grievance forms and an October 30, 1998 work absence slip from Dr. Carman, an attending psychologist. The December 8, 1998 decision denying her claim was based on appellant's failure to establish a compensable factor of employment. Section 10.606(b)(2) provides that appellant must submit relevant and pertinent new evidence to require reopening her case for merit review. Thus, in order to qualify as relevant, the evidence submitted must address the critical issue of establishing a compensable factor of employment. As the August 28, 1998 grievance forms merely list appellant's allegations against the employing establishment, without providing corroboration, they do not constitute relevant and pertinent new evidence. As appellant did not establish a compensable factor of employment, Dr. Carman's work absence slip, which is medical evidence, need not be addressed.[18]

---

[14] *David G. Joseph*, 47 ECAB 490 (1996); *Martin Standel*, 47 ECAB 1306 (1996); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, 28 ECAB 125 (1976).

[15] *See Lorraine E. Schroeder*, 44 ECAB 323 (1992).

[16] 20 C.F.R. § 10.606(b)(2) (1999).

[17] 20 C.F.R. § 10.606(b) (1999).

[18] *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

Therefore, appellant has not submitted new and relevant evidence, nor has she met any of the requirements of section 10.606(b)(2). Accordingly, the Board finds that the Office properly refused to reopen the case for merit review in this case.

The decisions of the Office of Workers' Compensation Programs dated February 9, 1999 and December 8, 1998 are hereby affirmed.[19]

Dated, Washington, DC
October 23, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[19] Following the Office's February 9, 1999 decision, appellant submitted additional medical evidence, received by the Office on February 12 and 22, 1999. The Board has no jurisdiction to consider this new evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).