U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAKESHA D. BROWN and U.S. POSTAL SERVICE,
ROYAL OAK PROCESS & DISTRIBUTION, Troy, MI

Docket No. 99-1017; Submitted on the Record;
Issued September 21, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

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

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

On September 9, 1998 appellant, then a 24-year-old mail processor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained stress and depression in the performance of duty. Appellant alleged that on August 14, 1998 she was informed by a coworker that a comment was allegedly made on August 2, 1998 by her acting supervisor wherein her sexuality was questioned.[1] She was also approached by another employee who reiterated this same statement. Appellant indicated this upset her and caused her to seek medical treatment and to miss work. The acting supervisor denied making any statement directed at appellant, as alleged and denied that he was referring to anyone else at the employment establishment.

In a decision dated October 28, 1998, the Office of Workers' Compensation Programs denied appellant's claim, finding that appellant failed to establish that an injury was sustained as alleged.

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 of coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the

[1] The alleged overheard comment was, "What is [appellant] trying to do, turn her out?"

employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[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]

The Board finds that appellant has not submitted evidence sufficient to establish that the comment attributed to her supervisor was directed to her or that it was abusive in nature. Appellant has not alleged that her supervisor made a sexually abusive comment directly to her. Rather appellant's claim is that she heard, second hand, that her supervisor made a comment, which might have been about her. The evidence indicates that appellant's supervisor made a comment to another supervisor, the context and meaning of which is not clear by the evidence of record. Verbal altercations or abusive statements in the workplace may constitute a compensable factor of employment.[5] In this case, however, no evidence was introduced from any coworker who overhead or witnessed the comment alleged that the comment was in fact about appellant and that it was abusive in nature. Appellant's reaction to gossip is a personal frustration that is not related to her job duties or requirements and thus is not compensable.[6]

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Id*.

[5] *Mary A. Sisneros*, 46 ECAB 155 (1994).

[6] *Grace A. Richardson*, 42 ECAB 850, 853 (1991).

The October 28, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 21, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member