U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA J. DANIELS and U.S. POSTAL SERVICE,
POST OFFICE, Naples, FL

Docket No. 00-1416; Submitted on the Record;
Issued April 24, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty.

On October 7, 1999 appellant, then a 52-year-old rural letter carrier, filed a claim for severe depression and stress. She stated that she had been subjected to sexual harassment, supervisory intimidation and scare tactics. Appellant commented that she had been threatened with the loss of her job. She indicated that she had been intimidated for giving statements to the postmaster to protect other employees. Appellant stated that she talked to the station manager on one day to avoid an Equal Employment Opportunity (EEO) complaint but was subjected to an investigation two days later and placed on administrative leave.

Appellant related that the first episodes of harassment occurred after November 1991 when she was assigned to a rural route. She noted that her supervisor at that time, Karl Liebe, would constantly use the intercom to call her into his office so everyone in the employing establishment would know. Appellant related that on one such occasion she had been unable to deliver a package due to a known vicious dog but Mr. Liebe asked her when she "was going to start doing her job right." She stated that, on another occasion, Mr. Liebe watched her case and stated that one day he was going to walk in on her with just his boots on.

Appellant indicated that she was reassigned on September 4, 1993 but, due to an administrative error, she was not paid from February to July 1994. She indicated that the route she took over contained 40 to 60 feet of mail a day, requiring cases in 2 cases every day. Appellant stated that her supervisor, Frank Mea, finally allowed her substitute to come in to help. She commented that, on one occasion, when she requested sick leave for surgery, Mr. Mea delayed giving approval for the leave until one week prior to the surgery, even though appellant had submitted the request one month prior to the surgery.

Appellant indicated that, at another point in time, the employing establishment moved equipment within the building. She stated that the five cases that she used to case her mail were

rearranged to a position, which made casing mail more difficult. Appellant indicated that it took a month for the cases to be rearranged into the usual formation.

Appellant stated that she had an accident in the summer of 1997 when she backed up into a customer. She noted that her route required backing up in numerous places. Appellant requested that the route be studied to make it safer but, after three months, it was determined that the route would not be changed. She commented that she was threatened with a letter of warning and being transferred to a walking route.

Appellant related that her route was cut back in the summer of 1997 but she kept part of one of her cases empty in anticipation of new businesses opening on the route. She stated that her supervisor observed the empty space and, despite appellant's explanation, replaced her full-wing case with a half-wing case, stating that he "did n[o]t give a damn about your new business." When a health care home opened, appellant informed them that she would have to hold the mail for the business until her casing equipment was restored.

Appellant indicated that her current supervisor was Judith Pritchard. She requested parcel assistance but Ms. Pritchard refused to provide the assistance, instructing appellant to make two trips. Appellant noted that rural letter carriers did not make two trips daily because they were not compensated for the second trip. She stated that the discussion became loud which attracted Ms. Pritchard's superior, Jim Kurtyka. Appellant indicated that she explained her problem to Mr. Kurtyka who then instructed Ms. Pritchard to give appellant the assistance she needed. She stated that Ms. Pritchard thereafter made her life miserable.

Appellant claimed that Ms. Pritchard attempted to place mail in her case after she cleaned it prior to going out on her route so as to set her up for a letter of warning. She commented that Ms. Pritchard attempted to do this to her husband as well. Appellant stated that Ms. Pritchard refused to allow her brother to become her substitute when her former substitute left. She indicated that Ms. Pritchard attempted to give her a substitute with a poor driving record. Appellant related that she finally accepted a substitute proposed by Ms. Pritchard for one day a week but the substitute never showed up to work. She also stated that, when she and her husband put in for leave for the same time, Ms. Pritchard approved her leave, but, on the day before they were scheduled to take vacation, refused to grant her husband's request for leave, which resulted in the cancellation of the planned vacation trip.

Appellant indicated that, on September 7, 1999, the route count began. She felt too stressed to work so she allowed her husband to handle her route that day. Appellant noted that Ms. Pritchard would be performing the count on her route with Monica Gabrysh. She stated that her husband missed counting 200 pieces of mail that were undeliverable. Appellant indicated that another carrier received credit for mail she missed in the same manner but Ms. Pritchard did not give appellant credit due to misinformation provided by Ms. Gabrysh. She indicated that she and a coworker brought the matter to the attention of the officer in charge of the employing establishment. Appellant stated that, after the discussion with the officer in charge, Ms. Pritchard began to watch her closely, even coming out to the parking lot to watch appellant load her car for delivery. She related that Ms. Pritchard was seen going through her supplies and other material while she was delivering mail. Appellant stated that her husband talked with

Mr. Kurtyka to seek relief for her from Ms. Pritchard. She indicated that the next day, Ms. Pritchard accused her of falsifying her count and sent her home.

Appellant submitted statements from several witnesses. One coworker explained that the rural mail count was done for one month in which the carriers counted every piece of mail and performed other duties. The coworker indicated that the count formed the basis for the evaluation and pay of the carriers. She stated that appellant was harassed by her supervisors, being stared at constantly, even when she loaded her car in the parking lot. Appellant noted that, while appellant was out on her route, she saw Ms. Pritchard, on September 14, 1999, going through the trays under appellant's case, where appellant kept her personal belongings. She indicated that the supervisors were singling appellant out because they did not perform a check on anyone else.

A second coworker stated that the worst supervisor she had worked under was Ms. Pritchard. She commented that appellant was not the same person after Ms. Pritchard finished with her. Appellant indicated that Ms. Pritchard broke the contract to help break appellant's spirit. She stated appellant was forced to make two trips to her route because her car was not adequate for one day of deliveries. Appellant noted that Ms. Pritchard gave assistance to other carriers for parcels. She stated that, when zip codes were changed, appellant's cases were not reassembled in an adequate work order. The coworker related that management refused to change appellant's work area because she always got her work done before the route evaluation of daily work hours.

Appellant's husband repeated most of the information provided by appellant, citing the denial of vacation time and the planting of mail in his case. He also stated that Ms. Pritchard broke the contract by forcing appellant to make two trips, even though he worked on express mail in appellant's area and could have delivered the packages. Appellant's husband indicated that, during the route count, Ms. Pritchard watched appellant constantly. He noted that, after appellant talked to the postmaster, Ms. Pritchard searched through her case, including her personal items. Appellant's husband commented that, since nothing could be found, discrepancies showed up on appellant's count sheet. He stated appellant was escorted out of the employing establishment and given a removal notice. Appellant's husband reported that appellant was completely exonerated at the first step of the grievance process with no punishment or entries on her personnel record.

In a November 7, 1999 statement, Ms. Pritchard stated that she did not recall the incident where appellant had to make two trips but commented that appellant would have been compensated for the second trip. She indicated that she did not refuse to allow appellant's brother to bid on her route; however, because he was in a probationary status he could not bid. Ms. Pritchard commented that appellant's route had been put out for a bid for a substitute on several occasions but no one had bid on it. She noted that the employing establishment was short of employees and appellant's route was not the only route without a substitute. Ms. Pritchard stated that appellant had declined several new employees as substitutes so her husband, the first backup for her route, could get more work. She commented that the lack of a substitute did not become a problem until appellant had problems with leave approval. Ms. Pritchard indicated that appellant's husband's leave could not be accommodated because of the shortage of employees at the employing establishment. In regards to September 7, 1999, she stated that

appellant always took off the day after a holiday. Ms. Pritchard indicated that, in any count anomalies, all carriers were treated equally. She stated that all carriers received the same parking lot scrutiny. She commented that appellant was a carrier who needed improvement. Ms. Pritchard stated that, if appellant was depressed, it was most likely due to the accusation that she had falsified documents that had a direct relationship to her pay and therefore her employment had been terminated.

Ms. Pritchard submitted a copy of the September 29, 1999 notice of removal issued to appellant. She stated in the notice that appellant's count sheets had been altered on three days by adding a "1" in front of the numbers of flats that she had counted in appellant's mail.

In a January 27, 2000 decision, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that she did not establish that she was injured in the performance of duty as she alleged.

In a February 18, 2000 letter, appellant requested reconsideration. She submitted a statement from her husband, who repeated the prior statements on Ms. Pritchard's treatment of appellant. He reported that, during the period of the mail count, he saw Ms. Pritchard observing appellant while she delivered her route. Appellant's husband noted that the count sheet was out in the open and could have been altered by anyone. He pointed out that the employing establishment had surveillance cameras, which should have been able to show who altered appellant's work sheet but no such evidence was produced. Appellant's husband noted that Ms. Pritichard had received a promotion. He stated that complete exoneration of appellant was evidence that the employing establishment had no proof that she had altered her count sheet. In a February 29, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not contain relevant new evidence or substantive legal arguments and therefore was insufficient to warrant review of the prior decision.

The Board finds that the case is not in posture for decision.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more,

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

coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

Appellant made a general allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor, which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[4]

Appellant claimed that Ms. Pritchard harassed her up to the time she was cited for falsifying her mail count in September 1999. Some of the incidents appellant cited cannot be taken as evidence of harassment or as compensable work factors. The denial of leave to appellant's husband was an administrative matter, which Ms. Pritchard cited as caused by the lack of sufficient employees at the employing establishment. There is no evidence that the denial of leave was abusive. Appellant also did not establish that another carrier was given credit for an error in the mail count while appellant did not receive credit for the same error.

Additionally, the proposal to remove appellant for falsifying her count was a disciplinary action, which would not be a compensable employment factor.[5] Appellant's husband stated that the removal notice was overturned at the first step of the grievance process. However, the mere fact that a disciplinary action is lessened or dismissed is not evidence that the employing establishment acted in an erroneous or abusive manner.[6] Appellant did not submit a copy of any decision or settlement on her grievance and did not submit any evidence that the employing establishment's action in attempting to remove her was admitted to be an error or found to be abusive. She also did not submit any evidence in support of her contention that the alteration in her route count was done by Ms. Pritchard or someone else in retaliation for the complaints that appellant and her husband made to superiors about Ms. Pritchard's actions.

Appellant, however, did submit some evidence in support of her claim of harassment. She submitted statements from two coworkers who stated that Ms. Pritchard singled her out for

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[2] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

[3] *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

[4] *Joan Juanita Greene*, 41 ECAB 760 (1990).

[5] *David G. Joseph*, 47 ECAB 490 (1996).

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

constant monitoring during the period of the mail count, even though Ms. Pritchard denied that she singled appellant out. One coworker also reported that Ms. Pritchard searched around appellant's case, including through appellant's personal items, while appellant was out on her route. Ms. Pritchard did not respond to this statement and did not offer any explanation to justify a management purpose in closely monitoring appellant's work.

Appellant also cited several other matters in her employment, which would be compensable factors of employment. She indicated that for several months in 1994 she was not paid due to an administrative error. Appellant reported that, when her cases were moved, they were not reassembled correctly for a month, which made the performance of her assigned duties more difficult. She stated that on one occasion she was forced to make two trips to deliver parcels. As that incident related directly to the performance of appellant's assigned duties, it would be considered a compensable factor of her employment.

Appellant and her husband indicated that she did not have a substitute for her route for an extended period. Ms. Pritchard stated that appellant was not the only employee facing this problem. While appellant did not have a substitute for her route, she did not submit any evidence to show that she was forced to work longer hours or more days because of the lack of a substitute. She therefore has not established that the absence of a substitute for her route constituted a compensable factor of her employment.

The case must therefore be remanded for further development. On remand, the Office based on the evidence of record and any further evidence submitted by appellant or the employing establishment, should make a determination whether Ms. Pritchard harassed appellant in her employment. The Office should then prepare a statement of accepted facts, setting forth the factors of employment found to be compensable and those factors found not to be compensable. The Office should then refer the amended statement of accepted facts and appellant to an appropriate second opinion physician for an opinion whether appellant sustained an emotional condition causally related to the compensable factors of employment.[7] After further development as it may find necessary, the Office should issue a *de novo* decision.

[7] In an undated report, Dr. James B. Boorstin, a Board-certified psychiatrist, stated that appellant had a depressive disorder and diagnosed a schizotypal personality and paranoid personality. He stated that these conditions were exacerbated by appellant's history of harassment, culminating in the notice of removal. In view of the Board's decision in this matter, Dr. Boorstein should also be presented with an amended statement of accepted facts and asked to give his opinion on whether appellant's condition is casually related to any compensable factors of employment set forth in the statement.

The decision of the Office of Workers' Compensation Programs dated January 27, 2000 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
April 24, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member