

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE O. COOK and U.S. POSTAL SERVICE,
AIRPORT MAIL CENTER, MAINTENANCE DIVISION,
Philadelphia, PA

*Docket No. 00-339; Submitted on the Record;
Issued March 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On December 9, 1998 appellant, then a 43-year-old labor custodian, filed a claim alleging that she sustained an emotional stress condition due to "constant harassment and disparity of treatment by supervisor James Hand," the Tour 3 supervisor of maintenance operations beginning in May 1997. Appellant explained that, since October 1998, she had experienced migraine headaches, depression, insomnia, and nervousness, hopelessness, helplessness and did not have any prior history of emotional illness. She stopped work on December 5, 1998 and returned to limited-duty work on May 1, 1999, with a 15-pound lifting restriction 40 hours per week for two weeks.

In a December 15, 1998 statement, appellant attributed her condition to stress and overwork caused by Mr. Hand assigning her to buff floors, beginning on June 2, 1997, rotating all floor buffing to appellant's weekend shifts and being assigned to buff floors on three consecutive weekends in November 1998.¹ Appellant noted that, since sustaining a back injury while buffing a floor in January 1994, she had not been assigned a buffing route.

¹ In a November 29, 1998 letter, appellant alleged that Mr. Hand assigned her six floors to buff in one weekend instead of five, taking away the only floor another worker, Reggie Nurse, was assigned to buff. Appellant also alleged a pattern of harassment, abuse and racial and gender discrimination by Mr. Hand.

Appellant also attributed her emotional condition to a series of incidents involving Mr. Hand from June 3, 1997 to December 1, 1998.² She alleged that, on June 3, 1997, Mr. Hand assigned her to clean up a spill in another custodian's area and when she questioned this, he became irate, screaming "[y]ou go where I tell you to go. This whole building is your area."

On June 4, 9 and 10, 1997 Mr. Hand allegedly told appellant that she had better get used to not having Nicholas "Nick" Drumgoole as her supervisor. On June 9, 1997 Mr. Hand allegedly told appellant that Mr. Nurse, a coworker, felt that she should be demoted if she could not buff floors.

Appellant alleged that, on June 30, 1997, Mr. Hand yelled at her and accused her of lying for filing a grievance against him and that she felt intimidated as the only black female on Tour 3 maintenance.³

Appellant alleged that, on August 18, 1997, Mr. Hand stated that he would give her a walkie talkie and that he was putting her on an electronic leash."

Appellant alleged that shortly after May 23, 1998, Mr. Hand told Mrs. Hodges, a custodian, that appellant was lazy and a bad worker. She alleged that, on May 27, 1998, Mr. Hand praised other workers and assigned them tasks, then looked at appellant and yelled "you" without specifying her duties.

Appellant alleged that on June 2, 1998 Mr. Hand called her into his office and stated she was a poor worker.

Appellant alleged that on October 13 and 14, 1998 Mr. Hand asked her to file a grievance against Mr. Drumgoole and Mr. Mattox and that, when she would not comply, he assigned overtime only to Mr. Nurse from October 12 to 25, 1998. She alleged that, in a November 9, 1998 meeting, Mr. Hand stated that he "still loved her," which she interpreted as sexual harassment. Appellant noted that, in November 30, 1998, Mr. Hand accused her of not completing an assignment that he had not given her. She alleged that, in late November 1998, management denied her access to the Employee Assistance Program (EAP). Appellant also alleged that on December 1, 1998 Mr. Hand called her into his office and then went berserk, stating that he would not speak to her without a union steward present as she distorted his remarks.

In a March 1, 1999 statement, appellant alleged that, in May 1997, Mr. Hand commented to her that Prednisone, one of her prescribed medications, was a treatment for mental illness. In the summer of 1998, Mr. Hand refused to provide assistance to appellant to move furniture in

² The Board notes that appellant submitted a copy of a union newsletter containing an article about an unnamed Tour 2 custodial service supervisor. However, as the article does not mention Mr. Hand or appellant by name, the article cannot be considered as relevant, pertinent evidence in this case. *See William C. Bush*, 40 ECAB 1064, 1075 (1989).

³ The record contains a June 4, 1997 step two grievance appeal. There is no final decision of record regarding this grievance.

areas where the floor had to be buffed. When appellant presented light-duty restrictions to Mr. Hand, he stated that she would have to be assigned to another duty station as the airmail facility did not offer light duty. Mr. Hand then reassigned all of appellant's duties to Mrs. Hodges, one of appellant's coworkers.

In September 1998, Mr. Hand stated that appellant would have to undergo a fitness-for-duty examination in order to remain on light duty, but did not impose this requirement on other employees on light duty. On October 5, 1998 appellant chose to return to regular duty and requested that Mr. Hand no longer process her medical forms as he had discussed confidential information with others.

In a January 8, 1999 letter, Mr. Hand asserted that since his assignment to Tour 3, appellant "expressed ... her preference in supervision" for Mr. Drumgoole. Mr. Hand noted that, following a November 9, 1998 meeting with management and union representatives, appellant had requested "route rotation," which was granted at the instruction of station manager Collis Mattox, Jr. Mr. Hand refuted appellant's allegations of harassment and abuse.

In a January 11, 1999 letter, Mr. Hand stated that the Tour 3 custodial tour was properly staffed and that there were "no extra demands" placed on appellant.⁴

In a January 13, 1999 letter, Mr. Mattox asserted that appellant had not been treated differently than other employees and that her allegations of harassment and abuse were not substantiated. Mr. Mattox noted that, in November 1998, Mr. Hand rotated appellant to clean the administrative side of the building, but that she asked to return to her previous duty site after less than two weeks. Mr. Mattox noted that there were staffing shortages on Tour 3 and until May 22, 1998, there were two custodial vacancies on Tour 3, which were filled on May 23 and October 24, 1998.⁵ Mr. Mattox contended that, despite these shortages, appellant "was only required to perform 7.3 hours of work during her" 8-hour duty shift. While appellant was "required to perform duties in various areas" during the staffing shortage, her "total workload did not increase...."

In a January 20, 1999 letter, Mr. Drumgoole stated that in 1997 appellant approached him on a number of occasions and stated that Mr. Hand said to her that "he was not Nick", that "you may as well get used to it" and that "he was going to be here (Tour III) for a long time."

Appellant informed Mr. Drumgoole that Mr. Hand made disparaging remarks about Mr. Drumgoole to employees, prompting Mr. Drumgoole to meet with Mr. Mattox. Mr. Mattox then met with Mr. Hand. Mr. Drumgoole stated that appellant then approached him stating that

⁴ The employing establishment submitted brief statements from thirteen employees at appellant's duty station asserting that they had not witnessed Mr. Hand harassing or abusing appellant.

⁵ Appellant worked overtime on the following dates in 1997 and 1998: April 10, June 26, August 21, 28, September 4, 7, 21, 22, 24, 26, October 3, 9, 16, 24, 30, November 4, 6, 11, 12, 13, 30, December 1 through 4, 18, 26 and 29, 1997; January 9, February 4, 5, 9, 10, 12, 20, 26, March 6, 8, 12, 19, 26, 29, April 2, 5, 9, 16, 19, 24, May 4, 5, 7, 12, 14, 18, 20, 21, 28, June 21, 24, 28 and July 3, 1998. However, appellant has not submitted any evidence substantiating that this overtime was involuntary, or allege that the overtime work constituted overwork.

Mr. Hand wanted her to file a grievance against Mr. Drumgoole and that Mr. Hand urged appellant to contact other managers and personnel officers regarding Mr. Drumgoole.

By decision dated June 16, 1999, the Office denied appellant's claim on the grounds that she failed to establish that the claimed emotional condition occurred in the performance of duty. The Office found that it was not established as factual that Mr. Hand harassed or abused appellant, assigned work unfairly, denied appellant overtime, gave appellant a verbal warning for not completing her assignments, told Ms. Hodges that appellant was lazy and a bad worker, requested that she file a grievance against Mr. Drumgoole, discussed her medical conditions with coworkers, gave her a walkie-talkie and stated he was putting her on an electronic leash, yelled at appellant for filing a grievance, or yelled "you" at appellant on May 27, 1998. The Office accepted as factual that appellant requested that work assignments be rotated among the custodial staff, that she was assigned to buff floors on a weekend on June 27, 1997, that appellant was assigned to buff floors three weekends in a row and that Mr. Hand instructed appellant on June 3, 1997 to clean a spill which was in another coworker's cleaning area. The Office found that these were administrative matters not in the performance of duty and that no error or abuse was shown.

The Office also found that appellant's contention that Mr. Hand should not have assigned all of her duties to Mrs. Hodges, while appellant was on light duty, was related to work assignment, an administrative matter not in the performance of duty. The Office also found that appellant's reaction to Mr. Nurse's opinion that "if a laborer could not buff then he or she should be demoted," was a self-generated fear of demotion not within the performance of duty.

Appellant also alleged that the employing establishment denied her access to psychological counseling and Equal Employment Opportunity (EEO) assistance, but did not submit evidence of error or abuse regarding this administrative matter. The Office noted that medical reports had been received but were not considered as appellant had not alleged a compensable factor of employment.

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

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.⁶ When working conditions are alleged as factors 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

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

factors of employment and may not be considered.⁷ 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.

In this case, the Office accepted as factual that appellant was assigned to buff floors on the dates alleged, was instructed to clean a spill on June 3, 1997 in another worker's duty area, that she requested a rotation of work assignments among the custodial staff and that her duties were assigned to Mrs. Hodges when appellant was on medically-restricted duty. These factors all involve the assignment of work, which is an administrative matter not in the performance of appellant's duties.

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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁸

Appellant has not submitted sufficient evidence in corroboration of her claim to establish that the employing establishment erred or acted abusively with regard to the assignment of custodial duties, including buffing floors.

Appellant also attributed her emotional condition in part to overwork from being assigned to buff floors, which she asserted was in violation of her medical restrictions due to preexisting pemphigus vulgaris. The Board has held that overwork may be a compensable factor of employment.⁹ The evidence in this case, however, is insufficient to establish that appellant was in fact overworked. Appellant did not submit a report from an attending physician, covering any period from June 1997 to December 1998, containing medical restrictions due to pemphigus vulgaris or any other medical condition. Thus, as appellant did not establish that buffing floors was not within her capabilities, she did not substantiate that she was in fact overworked.

Appellant also alleged that she experienced stress due to Mr. Nurse's June 9, 1997 remark that she should be demoted if she was unable to buff floors. Appellant's reaction to Mr. Nurse's remark constitutes a self-generated fear-of-job or position loss and is not considered to be within the performance of duty.¹⁰

⁷ See *Barbara Bush*, 38 ECAB 710 (1987).

⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁹ *Sandra F. Powell*, 45 ECAB 877 (1994); *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹⁰ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

Also, appellant attributed her emotional condition in part to management denying her access to employee counseling programs and EEO assistance. However, appellant has not submitted evidence establishing that she was denied access to these programs.¹¹

Appellant also generally attributed her condition to a pattern of harassment and discrimination by Mr. Hand, her supervisor. The Board has long held that, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹²

The Board finds that appellant failed to submit evidence to corroborate the incidents of alleged harassment, including that Mr. Hand yelled at her, called her lazy or a bad worker, gave her a walkie-talkie and referred to it as an electronic leash, or told her that he loved her. The only incidents in this case that are accepted as factual are the administrative matters described above, that are not within the performance of appellant's assigned duties and do not constitute compensable factors of employment.

Consequently, appellant has failed to establish that she sustained an emotional condition in the performance of duty, as she did not establish any compensable factor of employment.¹³

¹¹ See *Michael Thomas Plante*, 44 ECAB 510 (1993).

¹² See *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹³ The record contains March 1, 1998 and January 5, 1999 reports from Martha Dooley, a nurse and counselor. As Ms. Dooley is not a physician, her reports are not considered probative medical evidence in this case. See 5 U.S.C. § 8101(3). Also, as appellant failed to establish a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

The decision of the Office of Workers' Compensation Programs dated June 16, 1999 is hereby affirmed.

Dated, Washington, DC
March 1, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member