U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA A. HANSELL and U.S. POSTAL SERVICE,
BYWATER POST OFFICE, New Orleans, LA

Docket No. 00-1418; Submitted on the Record;
Issued September 6, 2001

DECISION and ORDER

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

The issue is whether appellant established that she was disabled for work, beginning July 14, 1997, due to an employment-related emotional condition.

On December 16, 1995 appellant, then a 34-year-old letter carrier, was attacked and chased by three dogs as she was walking her route. The Office of Workers' Compensation Programs accepted that appellant developed an anxiety disorder as a result of the December 16, 1995 incident.[1] Appellant returned to limited-duty work on December 16, 1996; she was restricted from carrying mail and performing high volume or stressful work involving deadlines, shifting priorities or changes in routine.

On July 14, 1997 appellant stopped work and on July 21, 1997 she filed a claim for a recurrence of disability, alleging that her current condition was causally related to her accepted employment-related anxiety disorder. On May 13, 1998 appellant returned to limited duty, for four hours a day. In a narrative statement submitted in support of her claim, appellant described the events that led to her eventual emotional relapse.

Appellant alleged that several new incidents of teasing and harassment at work had caused the return of her disabling symptoms. Therefore, the Office adjudicated her case as a new emotional condition claim. By decision dated May 14, 1998, the Office denied appellant's July 21, 1997 claim on the grounds that she did not establish any compensable employment factors.

The Board has duly reviewed the case record and finds that appellant has failed to establish that she suffered a new emotional condition while in the performance of duty.

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[1] A miscarriage suffered by appellant approximately three days after the December 16, 1995 incident was not accepted by the Office as employment related.

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.[2] 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.[3]

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.[4] 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.[5]

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.[6] 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.[7]

Appellant alleged that, beginning about six weeks after returning to work, she was teased and taunted by several coworkers, who would converse about dogs in her presence, bark like dogs from behind closed bathroom stall doors, place pictures of dogs around her work station and put mail intended for the Society for the Prevention of Cruelty to Animals in her case. Appellant also asserted that her coworkers and supervisors told her she was a bad letter carrier because she could not go out on the street and do her share of the work. She added that one day someone with a barking dog followed her on her way home and that postal vehicles began following her everywhere. In addition, appellant alleged that, in an effort to make her appear

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[5] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[7] *Id.*

crazy, her coworkers tampered with her case, placing the mail out of sequential order after she had finished sorting it and removing three checks from where she had specifically placed them.[8]

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[9] 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.[10]

In this case, appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that these statements actually were made or that the actions actually occurred.[11] Thus, appellant has not established a compensable employment factor under the Act with respect to these named incidents.

Regarding appellant's allegations that several coworkers joked about her being crazy and having to take medication, the record contains evidence that two coworkers admitted to asking each other, not appellant, whether the other had taken his medication when one appeared to be in a bad mood, and that a coworker had commented that another coworker, not appellant, "would never be his woman because she was insane," "would never be [a certain employee's] woman because she is insane." As the record establishes that these comments were not made about or directed at appellant, they cannot be considered factors of her employment.

While the record does contain evidence that appellant's supervisor had placed a poster picturing a dog near the time clock and that appellant was sent home early whenever there was no more light-duty work, the Board finds that these events relate to administrative or personnel matters, are unrelated to the employee's regular or specially assigned work duties and thus do not fall within the coverage of the Act, absent a showing of error or abuse.[12] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[13]

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[8] The record contains evidence that three checks were misplaced; however, there is no evidence in the record to suggest that this was more than accidental.

[9] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[10] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[11] *See William P. George*, 43 ECAB 1159, 1167 (1992). In addition, the employing establishment refuted appellant's allegations, stating that it had conducted an investigation, but found no evidence to corroborate appellant's claims. The record contains 17 separate written statements made by coworkers, each of whom denied appellant's allegations.

[12] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988). The Board has 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.

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

In this case, the employing establishment explained that the poster picturing a dog had been placed near the time clock to advertise Dog Bite Prevention Week, a nationwide program. The employing establishment further stated that appellant was sent home only after she had worked the maximum number of hours specified by her restrictions.

For the foregoing reasons, appellant has not established any new compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained a new emotional condition while in the performance of duty.[14]

The Board further finds, however, that this case is not in posture for decision on whether appellant sustained a recurrence of disability, causally related to her previously accepted emotional condition.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a limited- or light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[15]

An employee who has returned to light duty is not considered to have fully recovered from her work-related injury. Thus, in claiming a recurrence of total disability, the employee's burden of proof is to show that the change in his injury-related condition was still due to the accepted injury, rather than another cause.[16] This burden of proof may be met if appellant's total disability is consequential to the accepted injury. The Board has previously held that the fact that a condition worsens to cause total disability, without establishment of causal relationship, is not sufficient to establish entitlement to total disability. The burden of proof can be met, however, if the employee demonstrates a change in the injury-related condition, which is now totally disabling and that the decompensation of the condition was a natural consequence arising from the accepted employment injury.[17]

Appellant has an accepted emotional condition and alleged that she stopped work due to a worsening of that same emotional condition. Therefore, the Office should additionally adjudicate this claim for a recurrence of disability. On remand, the Office should consolidate this case with No. A16-0273225.[18] After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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[14] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[15] *See Mary A. Howard*, 45 ECAB 646 (1994).

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500 (January 1995).

[17] *See Dana Bruce*, 44 ECAB 132 (1992).

[18] *See* FECA Bulletin No. 97-10 (issued February 15, 1997).

The May 14, 1998 decision of the Office of Workers' Compensation Programs is affirmed and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
September 6, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member