U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA K. LUA and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

Docket No. 01-1751; Submitted on the Record;
Issued November 27, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to the events of December 28, 1999.

Appellant a 48-year-old rehabilitation mailhandler, filed a notice of occupational disease on January 21, 2000 alleging that she developed "job stress (aggravated)" due to events which occurred on December 28, 1999. The Office of Workers' Compensation Programs requested additional factual and medical evidence on February 22, 2000. By decision dated May 24, 2000, the Office denied appellant's claim finding that she failed to substantiate a compensable factor of employment. Appellant requested an oral hearing on June 13, 2000. By decision dated January 29, 2001, the hearing representative affirmed the Office's May 24, 2000 decision.[1] Appellant requested reconsideration of this decision on February 6, 2001 and alleged that she had a previously accepted stress claim which should have been considered by the hearing representative. By decision dated April 24, 2001, the Office denied modification of the January 29, 2001 hearing representative's decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an

[1] Appellant has a previous claim for emotional condition, number 13-1173644 which the Office addressed in a separate decision. The Office accepted appellant's claim for major depressive disorder, but denied compensation benefits. Appellant has filed a separate appeal of this claim docketed number 02-1876. The Board will not address that decision in this appeal.

employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.[2]

Appellant stated that on December 23, 1998 she parked in the florence lot to accommodate her significant other, Marlene Moore, who had permission to park in that lot. Coworkers informed appellant that employing establishment police had surrounded her car. Ms. Moore was the first to arrive on the scene and had a disagreement with the officers. She experienced a severe anxiety attack and went to the employing establishment nurse. Appellant followed. Ms. Moore had high blood pressure and appellant drove her from the employing establishment.[3] Appellant did not report to work on December 24, 1999, taking her holiday. Her supervisor, Estella Tate, stated that appellant had an unauthorized absence from her assignment on December 23, 1999. Appellant informed Ms. Tate that she was driving Ms. Moore to the hospital and left the building without a leave slip and without signing out. She reported to work on December 27, 1999 and her supervisor Alfonso Villasenor deleted her holiday pay.

Appellant stated on December 28, 1999 that Union Steward George Spencer provided appellant with a document informing her that her step 2 settlement agreement had reduced her 14-day suspension to 7 days. She was summoned to a meeting which she believed was in regard to leave usage on December 24, 1999. Appellant appeared for the meeting and also present were Ms. Tate, Mr. Villasenor and Mr. Spencer. She had a civil suit pending against Mr. Villasenor and Ms. Tate and requested that a witness be present for the meeting. Mr. Villasenor denied this request. Mr. Villasenor informed appellant that this was a "Day in Court" regarding her absence on December 23, 1999. Ms. Tate stated that appellant began to pray and that, when she finished her prayer, she again stated that she needed a witness and attempted to leave the room. Mr. Villasenor gave appellant a direct order to sit down. Appellant then "slammed a writing tablet down on the table with great force" it slid across the table and struck Mr. Villasenor in the chest. Mr. Spencer stated that appellant threw the notebook on the table and that it slid, but that he did not believe that she did intend to strike Mr. Villasenor, who then telephoned security.

The security officers informed appellant that she was being detained for further investigation and she then became irate and uncooperative. Appellant refused to be escorted to the security office and attempted to leave the building. When the security officer attempted to prevent appellant from leaving the building she stated, "I [wi]ll kick your ass if you put your hands on me." Appellant repeated this threat and was escorted to the security office. She again threatened the officers once she reached the office.

The postal inspectors found that the writing tablet hit the table with a great deal of force which caused it to slide across the table and strike Mr. Villasenor. The conclusion was that appellant did not deliberately hit Mr. Villasenor. However, appellant did repeatedly threaten a security officer while under escort to the security office following the incident with Mr. Villasenor.

[2] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

[3] It is unclear if appellant drove Ms. Moore to the hospital or merely home.

On December 29, 1999 Mr. Villasenor placed appellant in an off duty status due to conduct unbecoming of a postal employee and failure to follow a direct order. On December 30, 1999 he superseded the December 29, 1999 letter and placed appellant in an off duty status without pay as on December 28, 1999 during a "Day in Court" she stood up and forcefully threw a notebook at him striking him in his chest. Appellant then verbally threatened postal security as she was escorted from the building. He stated that retaining appellant on duty may result in injury to appellant and others.

Appellant filed an Equal Employment Opportunity complaint regarding the events of December 23, 27 and 28, 1999. The employing establishment denied her complaint finding that she was not harassed when she received a ticket although her handicapped permit was visible, that she was represented in the December 28, 1999 meeting as Mr. Spencer was present and that Mr. Villasenor did not inappropriately discipline appellant.

Appellant based her allegations on the requirement that she report for the "Day in Court," the refusal of Mr. Villasenor to provide her with another union representative, Mr. Villasenor's charges that she assaulted him when her notebook hit him in the chest, the fact that Mr. Villasenor called security to have her escorted from the building and the disciplinary actions taken by Mr. Villasenor on the days following the "Day in Court."

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, including the "Day in Court" and the two letters placing appellant in an off duty status, the Board finds that these allegations related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act. Although the handling of disciplinary actions, are generally related to employment, they are administrative functions of the employer, and not duties of the employee. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[4]

Appellant has not submitted evidence that the employing establishment acted unreasonably in offering her a "Day in Court" to discuss a charge of absence without leave on December 23, 1999. Furthermore, although she requested that a witness be present, the employing establishment properly noted that Union Steward Spenser was present and appellant has not submitted any documentation that he could not properly represent her interests in this case.

Regarding the disciplinary actions following appellant's assault on Mr. Villasenor, there is no evidence of error or abuse in the record. Appellant apparently inadvertently struck her supervisor with a notebook in a dramatic gesture while disobeying direct orders to sit down. While this may not establish that she was capable of intentional violence toward herself or

[4] *Martha L. Watson*, 46 ECAB 407 (1995).

others, it was sufficient to form the basis for the initial disciplinary letter finding that appellant disobeyed a direct order. Her actions of verbally resisting and threatening the employing establishment's security officers with violence were certainly sufficient to raise the possibility that appellant was a danger to others and form a reasonable basis for the December 30, 1999 disciplinary letter. There is no evidence supporting appellant's allegation that the employing establishment acted unreasonably in this situation.

Appellant also alleged that the employing establishment improperly terminated her. In a letter dated March 3, 2000, the employing establishment informed appellant that she would be removed from the employing establishment no earlier than 30 days after receiving the letter. The employing establishment removed appellant for failure to follow instructions and unauthorized absence on December 23, 1999; failure to follow instructions and conduct unbecoming of a postal employment on December 28, 1999; and with making threatening remarks to a postal officer on that date. As noted above, the evidence does not support error or abuse by the employing establishment in the disciplinary actions that led to appellant's removal. Appellant has submitted no evidence to establish error or abuse in the termination.

Appellant alleged sexual harassment, reprisal for protected activities, conspiracy, malicious defamation, fraud, falsification of official government documents, obstruction of justice, perjury, intentional infliction of emotional distress, creation of a hostile work environment, false imprisonment, illegal search and seizure, intentional misrepresentation of facts and race and gender discrimination. 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[5] Appellant has submitted no evidence in support of her allegations. Without evidence to support that appellant was harassed through her disciplinary or other actions, she has failed to meet her burden of proof and the Office properly denied her claim.

The Board further finds that the hearing representative did not abuse his discretion by denying appellant's requests for subpoenas.

Section 8126 of the Act[6] provides, in relevant part, "The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may (1) issue subpoenas for and compel attendance of witnesses within a radius of 100 miles." An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.[7]

[5] *Alice M. Washington*, 46 ECAB 382 (1994).

[6] 5 U.S.C. §§ 8101-8193, § 8126.

[7] *Joseph D. Lee*, 42 ECAB 172 (1990).

The issue to be determined at the hearing was whether appellant established that she developed an emotional condition due to factors of her federal employment. Appellant requested subpoenas for Mr. Villasenor, Ms. Tate, Mr. Spencer, Mr. Ventura Gomez and Ms. Moore. Appellant stated that Mr. Gomez would prove that she was entitled to a fitness-for-duty examination prior to her termination. She stated that Ms. Moore would testify regarding the events of December 23, 1999. Appellant also requested leave requests, medical documentation and December 21, 1999 grievance letter which reduced her suspension from 14 days to 7.

The hearing representative properly noted that the record contained statements from Mr. Villasenor, Ms. Tate and Mr. Spencer and found that the oral testimony would not be likely to provide new helpful information. He stated that the testimony of Ms. Moore and Mr. Gomez was not essential to establish appellant's claim. The hearing representative further informed appellant that only she could request her medical evidence and that the personnel documents were already part of her file. The Board must conclude that the Office did not abuse its discretion in denying appellant's requests.

The decisions of the Office of Workers' Compensation Programs dated April 24 and January 29, 2001 are hereby affirmed.

Dated, Washington, DC
November 27, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member