U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY L. HAMMOND and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

Docket No. 02-1487; Submitted on the Record;
Issued November 4, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition while in the performance of her duties.

On January 5, 2000 appellant, then a 45-year-old clerk, filed a claim asserting that she experienced harassment, intimidation, belittlement and theft of worktime (pay) by her supervisor which caused stress. In a statement dated March 22, 2000, appellant alleged that she had been subjected to an ongoing campaign of harassment since August 1999 by her supervisor as his means of retaliation. She submitted copies of Equal Employment Opportunity (EEO) complaints filed since August 1999; copies of a January 31, 2000 letter of warning and a 14-day suspension for failure to work at another station and for not coming into work at her regular time; a February 29, 2000 letter between management and the union agreeing that appellant be allowed to elect the leave category for January 7, 2000; a March 16, 2000 letter from the South Carolina Magistrate Court noting that, on January 4, 2000, the ruling was held for the plaintiff, [appellant], in the claim of Nancy Lee Hammond v. Tim Neubert, copies of letters from appellant requesting reassignment and some medical evidence.

In a decision dated January 9, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she failed to establish that she was injured in the performance of duty. The Office found that the factors appellant claimed to be the cause of her condition were not compensable factors of employment. The Office explained that as appellant had indicated that her stress was the result of certain administrative actions and/or mistreatment, harassment and abuse from her supervisors, the evidence must show that she was either abused/harassed or that the administrative actions were either erroneous or abusive actions on the part of management. As there was no evidence of employing establishment error or abuse pertaining to appellant's allegations regarding the letter of warning and a 14-day suspension and her allegation pertaining to the employing establishment's changing of her time cards, the Office found that appellant failed to establish any compensable factors of employment.

Appellant, through her attorney, requested reconsideration. He indicated that the EEO statements submitted by appellant constituted evidence of persistent harassment and abusive conduct directed at appellant as a result of her prior activity with the EEOC, as well as the overwhelmingly demanding workload she faced due to inadequate staffing. He stated that the factors identified by appellant in her EEO complaints as well as the attached statement were:

> "(1) On January 4, 2000, [appellant] reported to work as scheduled and clocked in. [Her] supervisor, Timothy Neubert, informed [her] that her schedule had been changed and that she was to clock out immediately.
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> (2) "[Appellant] was further informed [that] she was to return to work at 11:00 a.m. that same day and work until closing time. That same day, [she] was scheduled to appear in court in a civil action brought against her supervisor, Mr. Neubert, at 1:00 p.m. Mr. Neubert was well aware of the scheduled court date when changing claimant's schedule. Court records in the civil matter provided by [appellant] indicate the Judge assigned to the civil matter ruled in [her] favor.
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> "(3) On January 5, 2000 [appellant] spent three and a half hours reviewing her work records and as a result realized Mr. Neubert was deleting her time for pay periods 21, 23 and 26 for the year 1999 and pay period 1 for the year 2000;
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> "(4) That same day, [appellant] was subjected to harassment and intimidation on the work floor; specifically, actions, tone, demeanor and directives by her Supervisor, [Mr.] Neubert, intended to confuse the [appellant] and place her in a state of submission.
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> "(5) [Appellant] was subject to discrimination based on her age and sex and specifically due to her prior EEO activity.
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> "(6) As a result of filing an EEO complaint, [appellant's] [s]upervisor, [Mr.] Neubert, improperly issued [her] a [l]etter of [w]arning for [u]nsatisfactory [a]ttendance/AWOL [Absent Without Leave].
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> "(7) Due to said EEO activity, [appellant] was improperly issued a January 24, 2000 [n]otice of [s]uspension for fourteen (14) days.
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> "(8) [Appellant] was improperly denied window training by her Supervisor, [Mr.] Neubert.
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> "(9) [Appellant] was improperly denied "regular employee" status and remained a "part-time flexible" employee.
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> "(10) On May 8, 2000 [appellant] was subjected to intimidation and harassment over a three and a half[-]hour period; specifically, her [s]upervisor, [Mr.] Neubert, followed [her] in a threatening manner while she performed her federal employment[-]related duties and while on break.

"(11) Due to said fear and intimidation, [appellant] was unable to complete her duties and had to consult the USPS counselor and an attending physician."

In a decision dated April 3, 2002, the Office denied modification of its prior decision. The Office found that appellant had failed to establish any compensable factors of employment factors in the development of her emotional condition and that the alleged factors of employment were either not compensable or not established as occurring as alleged.

The Board finds that appellant has not sustained an emotional condition while in the performance of duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to one's employment. There are situations in which an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. Generally, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act, though error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.[1] Allegations alone are insufficient.[2] Mere perceptions and feelings of harassment or abuse will not support an award of compensation. The claimant must substantiate his or her allegations with probative and reliable evidence.[3]

Many of appellant's allegations concerning the employment factors that caused her emotional condition involve training-related issues, reassignments and reassignment-related issues, the administrative function of the employing establishment in the issuance of a letter of warning and a 14-day suspension and time card changes and the desire and opportunity for advancement or promotion. In *Thomas D. McEuen*,[4] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.[5] Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

The Board has frequently explained that matters involving the training of an employee are administrative functions and do not arise out of and in the course of the employee's regular

[1] *Abe E. Scott*, 45 ECAB 164 (1993).

[2] *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

[3] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

[4] 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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

or specially assigned duties.[6] In this case, appellant has presented no evidence of administrative error or abuse regarding her training. Therefore, it is not compensable under the Act. The Board has frequently held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[7] Although appellant has alleged that the employing establishment failed to convert her from a part-time flexible carrier to regular employee status, the only evidence reflective on that subject is a May 15, 2000 agreement which does not specifically note appellant as one of the 4 PTF clerks being converted to regular status. Moreover, the agreement specifically states that "while agreeing to do this we do not agree that we are in violation of Article 7." Although the record contains appellant's request for a transfer, there is no evidence of record as to whether the employing establishment acted on it. Appellant has not established error as a compensable employment factor under the Act. Although appellant might have felt that the events pertaining to her schedule on January 4, 2000 were unreasonable and/or abusive given the fact that a civil action was brought against her supervisor that day, the record is devoid of any evidence to corroborate appellant's perception. It is further noted that the record is devoid of the subject matter pertaining to the civil action appellant brought against her supervisor. The scheduling of workdays is an administrative function of the employing establishment and administrative or personnel matters are not compensable absent a showing of error or abuse.[8] Thus, appellant has not established a compensable factor under the Act in this respect.

Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.[9] The record reflects that the letter of warning and a 14-day suspension were issued for failure to go to another workstation and for not coming in to work at the regular time. The record is devoid of any showing that the employing establishment's assignment of appellant to another workstation was either erroneous or abusive. Appellant has submitted insufficient evidence that the letter of warning was an unreasonable administrative actions or that erroneous personnel actions were taken by the employing establishment in the course of or as a result of failure to come into work at her regular time. Although appellant states that her time cards were altered by the employing establishment, there is insufficient evidence of record to show there was an unreasonable administrative action. Therefore, appellant's contentions are not compensable under the Act.

Although appellant's attorney had alleged that she had a demanding workload due to inadequate staffing, the Office properly noted that the record was devoid of any details or evidence to show that such situation existed. Accordingly, the Office properly found that this alleged factor was not established.

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[6] *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995); *Michael Thomas Plante*, 44 ECAB 510 (1993).

[7] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

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

[9] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

Appellant also alleged that she was discriminated and retaliated against and was harassed, primarily based on allegations of racial and sex discrimination and her previous dealings with EEO claims. It is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[10] Such incidents and allegations may rise to the level of compensable harassment if they are established to have occurred. In the present case, appellant has not submitted sufficient evidence that she was harassed or discriminated against by the employing establishment, with regard to promotions, assignments or disciplinary actions or that her supervisor harassed or discriminated against her in retaliation for her EEO complaints or in his managerial style in the incident of May 8, 2000.[11] As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work and her work environment which do not support her claim for an emotional disability.[12] For this reason, the Office properly determined that the alleged incidents of harassment constituted mere perceptions of appellant and were not factually established. Moreover, frustration stemming from the rejection or dismissal of EEO complaints is not a basis for compensation under the Act.[13]

Appellant's attorney additionally argued that appellant's statements should be accorded "great probative value." The three cases offered in support of this proposition were *Constance G. Patterson*, 41 ECAB 206 (1989); *Bill W. Harris*, 41 ECAB 216 (1989); and *Thelma S. Buffington*, 34 ECAB 104 (1982). The Office properly noted that these cases concern traumatic injury claims while the instant case is an occupational claim for an emotional disorder. Moreover, appellant's allegations were not supported by the statements of witnesses submitted to the record.

In its decisions of January 9, 2001 and April 3, 2002, the Office found that appellant had failed to establish any compensable factors of employment in the development of her emotional condition claim and that the alleged factors of employment were either not compensable or not established as occurring as alleged. Accordingly, contrary to appellant's assertion, appellant's claim was not rejected for the sole reason that the record in her case was one of contradicted allegations. The Office addressed appellant's specific allegations, weighed the probative value of the evidence submitted and drew a conclusion based on the evidence.[14] Accordingly, in the instant case, the Office properly fulfilled its adjudicatory obligation.

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[10] *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[11] *See Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[12] *See Curtis Hall*, 45 ECAB 316 (1994).

[13] *Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

[14] When conflicting evidence supports opposing conclusions with equal force and further development of the facts or closer scrutiny of the evidence will not allow a clear conclusion to be drawn, see procedure manual, Chapter 2.809.3(c), 10.d(3) (June 1984).

As appellant has failed to establish any compensable factors of her federal employment, the medical evidence need not be considered.[15]

Accordingly, the April 3, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 4, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[15] *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).