U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANA D. PIZARRO and U.S. POSTAL SERVICE,
VEHICLE MAINTENANCE, San Juan, PR

Docket No. 02-1036; Submitted on the Record;
Issued February 27, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant, a 50-year-old storekeeper, filed a notice of traumatic injury on November 13, 2001, alleging that she experienced a nervous breakdown on November 8, 2001. The Office of Workers' Compensation Programs requested additional factual and medical evidence by letter dated December 21, 2001. By decision dated February 8, 2002, the Office denied appellant's claim finding that she failed to substantiate a compensable factor of employment.

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

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 employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[1]

Appellant attributed her emotional condition to deliberate harassment, retaliation, persecution and hostility at the employing establishment. She stated that she was improperly removed from work, that she returned to work on October 11, 2001 and that within two weeks the employing establishment conducted an audit of her purchases.

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

Appellant submitted a complaint of discrimination alleging that she was unjustly removed from the position for working overtime. In support of her claim, appellant submitted an arbitration award dated September 19, 2001 which found that the employing establishment did not have cause to remove appellant for accepting pay for time that she did not work. The arbitrator found that appellant's husband and supervisor, George Wezer, had authorized her overtime and that employees who reported to work on nonscheduled days were guaranteed eight hours of overtime whether the employees actually worked for that entire period or not. The arbitrator concluded that the evidence did not establish that appellant was party to the improprieties for which management was responsible and reinstated appellant with back pay.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. 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.[2]

The Board finds that the evidence of record is sufficient to establish that she was improperly removed from her position and that this improper removal constitutes a compensable factor of employment.[3]

The arbitrator's decision analyzes the overtime issue under applicable law and finds, "Accepting, for the purpose of further analysis, the contention that Grievant did no work during the more than 20 hours for which she was paid over the course of the six Saturdays at issue, the record still does not establish misconduct … Grievant was entitled to eight hours of overtime pay when she was called in to work on a Saturday … the record establishes that she was called in or assigned to work on those days due to the press of work and understaffing…." The arbitrator determined, "While the situation surely indicates impropriety, it must be regarded as the Manager's impropriety, for it was he who made the assignments … [and] it was he who … authorized Grievent to depart [before eight hours had elapsed]." Moreover, the arbitrator summarized that "nothing has established that Grievant was party to the improprieties for which management is responsible."

The union contract referred to and discussed in the arbitrator's decision recognizes Article 8, Section 8, of the National Agreement guarantees that a full-time regular employee "will be guaranteed eight hours work or pay in lieu thereof" when called in to a work nonscheduled day.

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

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

In finding no just cause to issue the notice of removal and reinstating appellant with back pay, the arbitrator concluded:

> "What remains, thus, is an employee who was assigned to work overtime on Saturday and who, upon completion of her tasks, was authorized to leave before completing a full eight hours of work. She was entitled to a guarantee of either eight hours of work or eight hours of pay…. Accordingly, Grievant's receipt of those overtime wages has not been shown to have been a dishonest or improper act."

The September 19, 2001 decision of the arbitrator, while not binding on the Board in its result,[4] is of substantial probative value in this case. Under the circumstances of this case, the Board concludes that a review of the evidence of record, despite appearances of inappropriate conduct, establishes that the employing establishment did not have sufficient cause to terminate appellant's employment, and therefore the unwarranted termination of appellant's employment constitutes a compensable factor of employment.

The employing establishment conducted an audit of appellant's workstation on March 19, 2001 and found that appellant made purchases with the employing establishment credit card, including a blazer and two pairs of slacks, paint, tools and fishing equipment, insect repellant and air freshener. On November 9, 2001 appellant's supervisor, Dr. Luis Garcia, questioned appellant regarding these purchases. Appellant stated that the purchases were approved by Mr. Wezer, her husband and supervisor, at the time the purchases were made.

Jorge Luis Negron, a union steward, completed a statement on November 13, 2001 asserting that Mr. Garcia questioned appellant regarding credit card purchases which were duly authorized and signed by the manager of vehicle maintenance.

Appellant also submitted a grievance settlement dated November 23, 2001 which stated, "[I]t is agreed by management that [it] will cease and desist questioning Grievant regarding charges to the credit card and no discipline or retaliation will be taken against her regarding that matter. Grievant will return to work and management will not ask her anything related to her previous case or the credit card charges."

Investigations are considered an administrative function of the employing establishment and are not considered to be employment factors.[5] However, as noted above, demonstrated error or abuse in the administrative functions of the employing establishment can be compensable employment factors. Appellant has alleged that the employing establishment improperly questioned her regarding the audit of her work area as all the purchases made were approved by her supervisor. The Board finds that appellant has not submitted sufficient evidence to establish that the investigation by the employing establishment was unwarranted or handled unreasonably. Appellant made purchases on the employing establishment credit card which on their face appear inappropriate given her position at the employing establishment. Therefore, the employing

[4] *See Daniel Deparini*, 44 ECAB 657 (1993).

[5] *Jimmy Copeland*, 43 ECAB 339, 345 (1991).

establishment had reason to investigate appellant's authority to make the questioned purchases. Furthermore, appellant has not submitted any evidence establishing that the employing establishment committed error or abuse in the methods used to conduct the investigation. The Board does not find that appellant has established that the investigation constitutes a compensable factor of employment.

As appellant has established a compensable factor of employment, the Board must consider the medical evidence submitted in support of her claim. Appellant submitted a report dated November 8, 2001 from Dr. Robert Coira diagnosing depressive symptoms with anxiety. This medical evidence supports appellant's assertion of an emotional condition, but is insufficient to meet appellant's burden of proof as Dr. Coira did not provide a history of injury describing the accepted employment factors and as he did not provide any medical reasoning explaining how and why appellant's diagnosed condition resulted from the accepted compensable factors.

Appellant also submitted a lengthy report written in Spanish. As appellant has implicated a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. As the Office did not find a compensable factor of employment, the Office did not analyze or develop the medical evidence and did not seek a translation of the medical evidence included in the record. The case will be remanded to the Office for this purpose.[6] On remand, the Office should review the medical evidence in the record by securing an accurate translation. The Office should also further develop the medical evidence by providing a statement of the accepted factor to an appropriate physician to determine if there is a causal relationship between appellant's diagnosed condition and her accepted employment factor.

The February 8, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for additional development consistent with this opinion of the Board.

Dated, Washington, DC
February 27, 2003

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

Michael E. Groom, Alternate Member, dissenting:

"The facts in this case of course are complicated by the fact that Grievant was called to work overtime by her own husband through an arrangement in which, as she described it, she would tell him when work needed to be done. The manager nonetheless was the person responsible for assigning overtime to Grievant, whom he directly supervised. While the situation surely indicates impropriety, it must be regarded as the manager's impropriety, for it was he who made the assignments." Jaquelin F. Drucker, Arbitrator.

Appellant has alleged her emotional condition to harassment and persecution, alleging she was improperly removed from her position for working overtime. The evidence of record, albeit scant, indicates that as of 1997 appellant was directed by her manager-husband to report directly to him. Thereafter, with approved overtime, appellant enjoyed earnings of approximately $15,000.00 to $20,000.00 over her base salary from 1998 into 2000. This led to an investigation and her subsequent removal. Appellant was reinstated under the arbitrator's September 19, 2001 decision. In addition to the overtime work, appellant made various purchases approved by her manager-husband, with an employing establishment credit card. These items included a pair of speakers for a personal computer, a ladies blazer and two sets of slacks, various tools and a fishing rod. On investigation, her general response was that her manager had authorized the purchases.

It is well established that findings of other administrative bodies are not determinative with regard to proceedings under the Act, which is administered by the Office and the Board.[7] Although the arbitrator in this case found procedural "shortcomings" pertaining to the removal of appellant and ordered her reinstatement, this decision is not binding upon the Board with regard to appellant's entitlement to benefits under the Act. I do not find that these "shortcomings" are sufficient to establish error or abuse on the part of the employing establishment in either the investigation or proposed removal of appellant. I would affirm the February 8, 2002 decision.

Michael E. Groom
Alternate Member

[7] *George A. Johnson*, 43 ECAB 712 (1992). "Findings of factual determination made by other agencies pursuant to other statutory schemes are not binding on the Office or the Board with respect to whether the individual is disabled under the Act." *Caroline Thomas*, Docket No. 2002-0242, issued August 13, 2002.