U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROL M. HUMPHRIES and U.S. POSTAL SERVICE,
POST OFFICE, Spring Creek, NV

*Docket No. 02-1108; Submitted on the Record;*
*Issued November 12, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to rescind its acceptance of appellant's emotional condition claim.

On August 19, 1999 appellant, then a 57-year-old mail carrier, filed a claim alleging a stress-related elevation in her blood pressure[1] due to error and abuse in the handling of her requests for leave, disability retirement and her compensation claim and too closely monitoring her work, and harassment and discrimination by the employing establishment through criticizing of her job performance, asking her to work faster, treating her rudely in front of customers and coworkers, and telling lies about her husband.

On October 29, 1999 the Office accepted appellant's claim for acute reactive hypertension and situational anxiety. The Office indicated that an August 11, 1999 discussion between appellant and her supervisor, Wanda Perry, regarding her job performance was a compensable factor of employment.

Effective April 1, 2000 the Office placed appellant on the periodic compensation roll to receive compensation benefits for temporary total disability.

By letter dated October 11, 2000, the Office advised appellant that it proposed to rescind its acceptance of her emotional condition claim and terminate her compensation and medical benefits on the grounds that it erred in accepting her claim. The Office stated that the incident between appellant and Ms. Perry on August 11, 1999 was not a compensable factor of employment because a discussion of an employee's job performance, absent evidence of error or abuse by the employing establishment, does not constitute a compensable factor of employment. On November 9, 2000, through her representative, appellant stated her reasons for disagreeing with the proposed rescission and submitted additional evidence.

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[1] Appellant was taken to the emergency room and treated for high blood pressure.

By decision dated November 29, 2000, the Office rescinded its acceptance of appellant's emotional condition and terminated her compensation and medical benefits effective December 3, 2000 on the grounds that the evidence of record failed to establish that the August 11, 1999 incident was a compensable factor of employment.

Appellant subsequently requested a hearing that was held on September 26, 2001. By decision dated and finalized December 17, 2001, the Office hearing representative affirmed the Office's November 29, 2000 decision.

The Board finds that the Office met its burden of proof in rescinding its acceptance of appellant's emotional condition.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees' Compensation Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.[2] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.[3] It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation.[4] In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.[5]

Workers' compensation law is not applicable 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 coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned duties or a requirement imposed by the employment, the disability comes within coverage of the Act.[6] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation.[7]

As a general rule, 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.[8] However, the Board has also held that coverage under

[2] *See Linda L. Newbrough*, 52 ECAB 323 (2001); *Eli Jacobs*, 32 ECAB 1147 (1981).

[3] *Id*.; *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

[4] *See* 20 C.F.R. § 10.610.

[5] *Alice M. Roberts*, 42 ECAB 747 (1991).

[6] 5 U.S.C. §§ 8101-8193.

[7] *Carolyn S. Philpott*, 51 ECAB 175 (1999).

[8] *Michael L. Malone*, 46 ECAB 957 (1995).

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.[9] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[10]

The Office originally accepted appellant's claim on the basis that the incident on August 11, 1999, when Ms. Perry discussed appellant's job performance with her, constituted a compensable employment factor. The Office rescinded acceptance of the claim on the grounds that it had failed to consider whether the evidence established error or abuse in the August 11, 1999 discussion of appellant's job performance. Regarding the August 11, 1999 incident, appellant alleged that Ms. Perry called her into an office to discuss her job performance and accused appellant of intentionally taking too much time to deliver her postal route.[11] On the reverse of the claim form, Ms. Perry stated that she questioned appellant about her job performance on August 11, 1999 and did not harass her. The Board notes that the assessment of an employee's job performance is generally considered an administrative matter and is not covered under the Act unless the evidence discloses that the employing establishment acted unreasonably or abusively.[12]

The Board finds that the Office has shown that the initial acceptance of the claim was in error as the discussion of appellant's job performance on August 11, 1999 was an administrative function of the employing establishment and there is insufficient evidence of record to establish administrative error or abuse. Ms. Perry, as appellant's supervisor, had the authority to monitor her job performance and discuss performance issues with her. A route inspection showed that appellant's route could be delivered more efficiently and the union president did not disagree with the route inspection or adjustment. There is no grievance decision or other finding that the employing establishment erred in the route inspection or route adjustment or in asking appellant to meet the delivery standards. In October 15, 1999 and September 24, 2001 statements, carrier Sharon Schollars indicated that she sometimes delivered appellant's route and, on occasion, she needed assistance in completing delivery. She expressed her opinion that the route was "overburdened" and appellant was under too much pressure to deliver the route within the allotted time. She stated that on August 11, 1999 she was sent to help appellant finish her route and appellant left to go to the hospital. Ms. Schollars asked appellant, "Are you okay?" and she replied, "No, she's going to kill me, Sharon." Ms. Schollars later told Ms. Perry about appellant's comment and Ms. Perry said, "I am going to kill her if she doesn't get her route

[9] *Id.*

[10] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[11] Before she left to deliver her route on August 11, 1999, appellant requested assistance in order to avoid using overtime. Ms. Perry denied the request, stating that appellant did not need assistance to deliver the route within the eight-hour workday. Appellant called in while delivering the mail to request assistance and began feeling ill. The employing establishment had conducted a route inspection in April 1999 and determined that appellant's route should take approximately 6 hours and 12 minutes to deliver. The employing establishment added 45 minutes of delivery stops to her route. The union president checked appellant's route and did not find any problem with the employing establishment's route adjustment. Appellant asserted that there was an abnormally low mail volume during the six days that her route inspection was conducted.

[12] *Sherry L. McFall*, 51 ECAB 436 (2000).

done." The statement of Ms. Schollars does not establish error or abuse on the part of Ms. Perry during the August 11, 1999 performance discussion. Indeed, the statement does not establish that Ms. Schollars was a party to the discussions of that date. It does not appear that the comment made that date to Ms. Schollars was made to appellant. Considering all the evidence, the Board finds that appellant's emotional reaction to the discussion of her job performance on August 11, 1999 was self-generated and not a compensable factor of employment.

Appellant also alleged that Ms. Perry criticized the way she cased mail, called her into her office for "little things," and that there was error or abuse in the handling of her leave requests and her application for disability retirement. As noted above, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act unless error or abuse by the employing establishment personnel is factually established. In two written statements, carrier Anna Dean stated her opinion that Ms. Perry unreasonably pushed appellant and other employees to work faster, gave them instructions about how to perform their tasks and sometimes changed instructions from day to day, and monitored their work closely. She alleged that Ms. Perry told carriers that their delivery estimation times were wrong, tried to get carriers to argue with her, then advised what the computer estimated for that day and, if the carriers did not change their times, she would watch them deliver the route or threaten a letter of warning. Ms. Dean stated that Ms. Perry stood behind appellant while she worked and made remarks about her performance or sat behind her and wrote comments into a binder. She stated her opinion that Ms. Perry pushed appellant too hard. An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment, absent evidence of error or abuse, is not covered under the Act. Although Ms. Dean's expressed her dissatisfaction with Ms. Perry's supervisory manner, she provided insufficient details to establish that Ms. Perry erred or acted abusively in carrying out her supervisory duties in regard to her interaction with appellant. Therefore, these statements do not support finding compensable employment factors.

Appellant also alleged that she was harassed and discriminated against by Ms. Perry. The Board has held that actions of an employee's supervisor, which the employee characterized as harassment may constitute factors of employment giving rise to coverage under the Act. However, for harassment to give rise to a compensable disability there must be evidence that harassment and discrimination did in fact occur. Mere perceptions of harassment and discrimination are not compensable under the Act.[13] Appellant alleged that Ms. Perry constantly harassed her from August 26 to September 23, 1999. However, she did not provide sufficient details of the instances she believed constituted harassment occurring during this period or supporting evidence. Therefore, the alleged harassment cannot be accepted as a compensable factor of employment. Appellant alleged that Ms. Perry demeaned her in public view on March 1, 2000 when she ignored appellant's request to sign a paper. However, the record lacks specifics regarding this context of this incident. Although a postal customer opined that Ms. Perry was disrespectful on this occasion,[14] she did not provide sufficient detail in her statement to establish that the incident constituted harassment or discrimination. There is

[13] *George A. Ross*, 43 ECAB 346 (1991).

[14] In a statement dated March 6, 2000, a customer indicated that on March 1, 2000 she observed Ms. Perry ignore appellant when she asked her to sign a leave slip.

insufficient evidence that the March 1, 2000 incident rose to the level of being a compensable employment factor. Appellant also alleged that she had an emotional reaction to Ms. Perry talking to her in a loud and direct manner without using polite phrases. However, appellant has not established that the manner in which Ms. Perry spoke to her constituted harassment or discrimination. Therefore, this allegation does not constitute a compensable employment factor.

Appellant further alleged that her supervisors harassed her by asking her to work faster. However, appellant provided insufficient evidence of harassment or discrimination by the employing establishment in setting standards for the delivery of her route. In statements dated September 18, 1999 and September 24, 2001, carrier Jonica Minton stated that appellant was pushed to work harder and faster, questioned about her delivery times every day, and was discriminated against because of her age by Ms. Perry. She stated that Ms. Perry told appellant that she was taking too long to deliver her route and make comments such as, "Your case is a mess, no wonder you are so slow, I can't believe you have been a carrier that long," Ms. Perry timed appellant's bathroom breaks but did not do so for other employees and moved her desk so that she could stare at appellant's case, and the postmaster threatened appellant with discipline if she did not work faster. However, although Ms. Minton felt that Ms. Perry and the postmaster harassed and discriminated against appellant, her statements do not contain sufficient detail to establish that their supervision of appellant rose to the level of harassment or discrimination. Therefore, Ms. Minton's statements do not establish a compensable employment factor.

In statements dated September 15 and 24, 1999, John Weisinger, a letter carrier, stated his opinion that appellant was pushed to perform too much work for her age and appeared stressed. He stated that appellant was more closely monitored after she filed an age discrimination complaint. However, his statements lack sufficient detail to establish that the employing establishment harassed or discriminated against appellant. Therefore, a compensable employment factor has not been established by Mr. Weisinger's statements.

In statements dated October 2 and 19, 1999 and September 24, 2001, shop steward Jim Johnson stated his opinion that Ms. Perry harassed appellant to worker faster than was reasonable for her age, accused her of deliberately slowing down, argued with appellant about her work estimates, accused her of failing to follow instructions, did not grant her time to meet with him in his capacity as the union steward, and lied about appellant.[15] He stated that the computer-projected delivery times for the routes of appellant and other letter carriers were flawed and appellant could not perform her job at the projected rate of speed. Mr. Johnson stated that Ms. Perry once said to another carrier that, "I will kill her if she doesn't make her time"[16] and ordered appellant to "get in my office" on another occasion. However, Mr. Johnson provided insufficient detail to establish that Ms. Perry harassed or discriminated against appellant in these matters. Therefore, Mr. Johnson's statements do not establish a compensable factor of employment.

[15] The alleged lies are not described.

[16] As noted above, given this lack of detail concerning this incident, the Board is unable to say whether Ms. Perry's statement was meant to be taken literally or was just a figure of speech.

Appellant alleged that manager Rick Blankenship erred or acted abusively in handling administrative matters by standing behind her and watching her for up to 30 minutes at a time and telling her that she was not performing her tasks correctly and her job performance was declining. However, there is insufficient evidence of error or abuse regarding these administrative matters and, therefore, these allegations are not deemed compensable factors of employment.

Appellant also alleged harassment and discrimination from Mr. Blankenship. She alleged that he was rude, insulting, belittling and disrespectful to her but she provided no specific details or supporting evidence. Therefore, this allegation cannot be deemed a compensable employment factor. Appellant alleged that she had an emotional reaction when Mr. Blankenship told her on April 29, 1999 not to "get smart" with him. However, lacking supporting evidence that this comment constituted harassment or discrimination in the context of the situation, it does not constitute a compensable factor of employment. Appellant also alleged that she had an emotional reaction to Mr. Blankenship calling her "Carolyn" instead of "Carol" and acting "smart-alecky" when she requested that he call her "Carol." However, appellant has provided insufficient evidence to establish that Mr. Blankenship harassed or discriminated against her by calling her "Carolyn." Therefore, these allegations are not deemed compensable factors of employment.

Appellant alleged that during a September 17, 1999 meeting with Ms. Perry, Mr. Blankenship, and postmaster Dan Deremiah, lies were told about appellant. The only specific "lie" that appellant alleged was Mr. Deremiah's comment that she was under stress due to her husband's prostate cancer. However, there is insufficient evidence to establish any harassment or discrimination by Mr. Deremiah in making this observation. She also alleged that Mr. Deremiah treated her unfairly. However, she provided insufficient detail to establish this allegation as factual and it therefore cannot be deemed a compensable employment factor.

Appellant submitted documents relating to grievances she filed alleging harassment by the employing establishment. Appellant alleged that she was unfairly issued a letter of warning on August 6, 1999 for not following instructions.[17] In an undated letter, Linda Flores, the union president, stated that the employing establishment violated the union/management agreement by not giving appellant advance notification of a mail count to evaluate her efficiency, that appellant was not given the benefit of a regulation providing that carriers over age 55 could be granted an exception to job standards, and that route inspections were not performed according to regulations. Ms. Flores stated that appellant was harassed and unduly pressured to adhere to performance standards although she could not meet the standards and was exempt from them. In an undated document, the union alleged that Ms. Perry provided incorrect information with appellant's application for disability retirement. The union requested that management submit a corrected supervisory statement regarding appellant's retirement application and that a letter of apology be given to appellant. In a grievance appeal document dated March 3, 2000, appellant indicated that management had failed to schedule a step 2 meeting concerning a grievance filed by appellant and requested a cease and desist order to prevent the employing establishment from

[17] In a grievance settlement agreement dated September 21, 1999, the letter of warning was reduced to a discussion. There was no finding of error or abuse by the employing establishment in the agreement.

harassing employees. However, none of the grievances filed by appellant resulted in a finding that the employing establishment erred or acted abusively concerning administrative matters or committed harassment or discrimination. Therefore, this evidence does not establish any compensable factors of employment.

Appellant also alleged that employing establishment representatives Ms. Evans and Ms. Whisman were uncooperative and misrepresented facts regarding her claim. However, appellant provided insufficient evidence to establish this allegation as factual and it is not deemed a compensable factor therefore.

Because the Office properly found that appellant failed to allege a compensable factor of employment, the Board finds that the Office met its burden of proof in rescinding acceptance of the claim.[18]

The decision of the Office of Workers' Compensation Programs dated December 17, 2001 is affirmed.

Dated, Washington, DC
November 12, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[18] Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Gary M. Carlo*, 47 ECAB 299, 305 (1996).