

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STACY FOULKE and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Melville, NY

*Docket No. 03-1579; Submitted on the Record;
Issued November 25, 2003*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition causally related to factors of employment.

On September 21, 2001 appellant, then a 37-year-old distribution operations supervisor, filed an occupational disease claim alleging that she suffered from anxiety and stress as a result of her employment duties. She claimed that she was abruptly and involuntarily “shuttled” from her supervisory position at the Babylon Post Office to “CFS” and then to the Mid-Island Processing and Distribution Center; the employing establishment did not adhere to a stipulation of a Resolve Employment Disputes Reach Equitable Solutions Swiftly (REDRESS), binding mediation agreement reached on March 28, 2001 to have her reassigned back to the field; she did not receive adequate training to qualify her to work at the processing and distribution center and she had “[cc] mail” capacity removed from her computer; her assigned work area and position at the distribution center demanded excessive daily responsibilities such as an excess of 60 employees to supervise; she was not provided the ability to manage an appropriate work force for handling manual mail volume; the Mid-Island Processing and Distribution Center had a reputation for abusive behavior and appellant personally experienced such incidents; Mr. Maynes, the Babylon Station’s Postmaster, practiced discriminatory hiring and promotion practices because he approved several new supervisors at his location who were white males and did not hire appellant; when appellant was removed from her original position at the Babylon Station and moved to the other locations, she had to readjust her schedule from her familiar daytime hours to unfamiliar evening hours, but other people who had also been moved maintained schedules similar to their previous ones; and her reassignment and work schedule at the distribution center negatively affected her family life so that she was forced to send her son to live with her mother in another state.

The employing establishment controverted appellant’s claim alleging that her emotional condition was self-generated. They stated that, in June 2000, appellant was assigned to the Mid-Island Processing and Distribution Center as a supervisor and that the intention was for her to be sent “back to the field” as a supervisor, in customer services. She filed an Equal Employment

Opportunity (EEO) complaint with the Compliance and Appeals Center, which was resolved through the REDRESS¹ program and a settlement agreement was reached on March 28, 2001. In part, the agreement indicated that appellant and the employing establishment agreed that a “mutually acceptable” AO (Assistant Office) position would be “made available” to her within 30 days of the agreement.²

The employing establishment claimed that the reason appellant had not received a mutually agreed upon position was mostly due to the fact that she did not act upon the available positions in a timely manner. The record shows that appellant visited both Huntington Station and the Babylon Station almost two months after receiving word of vacancies at those facilities. The record indicates that appellant notified Mr. Hernandez by email that her first choice of location was the Babylon Station and her second choice was Huntington Station. She alleged that the employing establishment repeatedly “offered” her a position at the Hicksville Station, when they clearly knew that this location was not desirable to appellant. Mr. Hernandez responded to appellant that he would wait to make a decision on her position until after she had met with the postmaster and also indicated that he wanted to open up the pool to more applicants, but that this would not prevent appellant from securing a position at these locations.

Appellant’s treating physician, Dr. Juliana Kanji, a psychiatrist,³ indicated in a September 17, 2001 letter that appellant was experiencing anxiety and depression as a result of ongoing work-related problems. She opined that appellant should go out on medical leave effective immediately due to the symptoms she was experiencing, secondary to stress and anxiety at work. Dr. Kanji opined that appellant’s psychiatric condition was directly related to the employing establishment’s failure to comply in a timely manner with appellant’s March 28, 2001 settlement agreement.

By decision dated April 18, 2002, the Office of Workers’ Compensation Programs denied appellant’s claim for an emotional condition on the grounds that she did not establish any compensable factors of employment.

Appellant disagreed with the Office’s decision and requested an oral hearing. At the hearing, held on December 18, 2002, appellant claimed that she did not voluntarily transfer to the CFS Center, but was forced to transfer because her supervisor thought she was under too much stress at her current location. She also acknowledged that she was eventually transferred from CFS to the Mid-Island Parts and Distribution Center, which included a schedule change, because of disciplinary problems, mainly, because of her excessive lateness.

By decision dated March 3, 2003, the Office hearing representative affirmed the April 18, 2002 decision on the grounds that appellant did not establish any compensable factors of employment in the performance of duty.

¹ *Id.*

² The agreement also provided that appellant would receive \$225.00 for “out-of-pocket medical expenses” and \$1,000.00 for a “processing fee.”

³ The Board was unable to ascertain whether she is Board-certified.

The Board finds that appellant has not established that she sustained an emotional condition causally related to factors of 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 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 his or 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.⁴ 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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

To establish an emotional condition causally related to factors of his or her federal employment, a claimant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁶

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.⁷ 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.⁸

In this case, the Board finds that appellant has identified no compensable work factors that are substantiated by the record and that the employing establishment has neither erred nor acted abusively or unreasonably in the administration of personnel matters.

Appellant first alleged that the employing establishment breached their settlement agreement by not securing her a supervisory position within 30 days of the agreement in a

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Fred Faber*, 52 ECAB 107 (2000).

⁷ *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

mutually agreed upon location by herself and Mr. Hernandez. The Board finds that this allegation relates to an administrative or personnel matter, unrelated to appellant's regular or specially assigned work duties and does not fall within the coverage of the Act.⁹ As noted earlier, disability is not covered where it results in appellant's frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁰ Regarding appellant's allegations that she was abruptly and involuntarily shuttled from one position to another, this is also an administrative function on the part of the employer and is not covered by the Act. Appellant also acknowledged that she was transferred as a result of her excessive lateness. She also alleged that her schedule was readjusted from familiar daytime hours to evening hours and that her reassignment and work schedule negatively affected her family life. These are also administrative and personnel matters involving work location and work hours and are not afforded coverage under the Act.¹¹ Dissatisfaction with the type of work assigned or the desire to perform different duties does not come within the coverage of the Act.¹² Appellant also claimed that she did not receive appropriate training at the processing and distribution center; that she had "[cc] mail" capacity removed from her computer; and that she was not provided the ability to manage an appropriate work force for handling manual mail volume.

The Board has found, however, 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³

In this case, appellant has failed to establish any administrative error or abuse on the part of the employing establishment when she did not receive a new supervisory position within 30 days of the settlement agreement. She has not submitted any evidence supporting that the employing establishment actually breached the agreement or acted unreasonably in failing to help her secure another position. The record indicates that she was provided with a list of available openings in different locations by letter dated April 28, 2001; and that appellant informed Mr. Hernandez, a supervisor, that she would prefer to work at the Babylon Station and that her second choice was Huntington Station. Mr. Hernandez responded that he would wait to make a decision, until after appellant met with the postmaster and that he wanted to open up the pool to more applicants. He noted that this would not prevent her from securing a position at one of these two locations.¹⁴ The Board notes that Mr. Hernandez's response that he would open up the pool to other applicants and would wait until appellant met with the postmaster does not, in and of itself, prove administrative abuse on the part of the employing establishment. The

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Thomas D. McEuen*, *supra* note 5.

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *Peggy R. Lee*, 46 ECAB 527 (1995).

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

¹⁴ The employing establishment pointed out that appellant waited almost two months to go visit both of these locations and suggested that she was not expeditious in her efforts to secure a position.

April 11, 2001 agreement stated that the position location would have to be mutually agreed upon both by appellant and the employing establishment, thus, allowing the employing establishment some leeway in making its decision regarding appellant's position. The agreement was vague in nature and did not specifically delineate the precise steps the employing establishment needed to take in order to "make available" a "mutually acceptable" position for appellant. She also submitted no evidence to establish that the employing establishment committed error or abuse regarding her change in work location and work hours, training, access to email and ability to manage manual mail volume.

The bulk of the remaining factors that appellant alleged contributed to her emotional condition involved discriminatory work and hiring practices. The Board has held that actions of an employee's supervisor or coworkers which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹⁵ However, for harassment to give rise to a compensable disability under the Act there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.¹⁶ In this case, appellant alleged that the processing and distribution center had a reputation for abusive behavior and that she personally experienced "such incidents," however, she did not explain any specific incidents of abuse and did not provide any corroborating and independent evidence that such incidents did in fact occur. Appellant also alleged that the postmaster at the Babylon Station practiced discriminatory hiring and promotion practices, because he approved several new supervisors who were white males, but again, appellant did not provide any independent evidence, such as a witness statement that there was any discrimination which prevented her from securing that position.

Appellant alleged that her position at the processing and distribution center demanded excessive daily responsibilities such as an excess of 60 employees to supervise. The Board has held that overwork may be a compensable factor of employment,¹⁷ however, the evidence in this case is insufficient to establish that appellant was in fact overworked. She provided no corroborating or objective evidence to establish that she had excessive daily responsibilities and had to supervise an excess of 60 employees.

As appellant has failed to establish any compensable factor of her federal employment, the medical evidence need not be considered.¹⁸ For these reasons, appellant has not met her burden of proof in establishing that she sustained an emotional condition while in the performance of her duties and the Office properly denied her claim.

¹⁵ 5 U.S.C. §§ 8101-8193.

¹⁶ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁷ *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹⁸ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The March 3, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 25, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member