United States Department of Labor
Employees' Compensation Appeals Board

TERRI L. BRIGHTON, Appellant	)	
and	)	**Docket No. 04-1275**
	)	**Issued: December 2, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Edison, NJ, Employer	)	

Appearances:
Terri L. Brighton, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 14, 2004 appellant filed a timely appeal from a January 16, 2004 merit decision of an Office of Workers' Compensation Programs' hearing representative, affirming a February 13, 2004 decision that she did not establish an emotional condition in the performance of duty. Under 20 C.F.R §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 42-year-old mail processor, filed a claim for an emotional condition on July 30, 2002, alleging that she developed stress and depression caused by factors of her employment. She became aware of this condition on July 19, 2002. Appellant stated that she had been employed as a full-time mail processor until enrolling in the employing establishment's police training program. She dropped out of the program after failing the firearms proficiency

test and attempted to reassume her previous position as full-time mail processor. However, she was reassigned as a part-time flexiplace (PTF) processor. Appellant contended that this constituted discriminatory treatment on the part of the employing establishment because one of her co-workers who participated in the police training program was reassigned back to work as a full-time mail processor.

On September 24, 2002 appellant stated that she was enrolled in the postal police training program from August 9 through September 19, 2001, when she was terminated for failing the firearms test. Upon her return to the employing establishment, she was offered jobs as a mail processor or letter carrier, both of which were PTF positions. She asked her union to assist her in regaining a full-time position at the employing establishment, but claimed that she was removed from the union without her consent. Appellant alleged that when she asked her plant manager to reassign her back to her processor position on a full-time basis, he informed her that she had been transferred to the letter carrier position for 18 months.

Appellant stated that, although she attempted to file a grievance through her union, the union informed her that she was not eligible to file a grievance because she no longer worked as a mail clerk. Appellant filed an Equal Employment Opportunity (EEO) claim. She related that a meeting was scheduled with the Human Resources Manager, the postmaster, the technical adviser and a mediator. At the conclusion of this meeting, she was told she would have her regular status and original seniority restored, and would receive back pay, sick and annual leave and holiday pay extending to the date she began the police training program.[1] Appellant claimed, however, that EEO recommendations were ignored, with the employing establishment placing her in an unassigned regular position entailing an 11-month loss in seniority dating back to her commencement of the police training program. She asked EEO if she could contact the mediator, but EEO rejected her request, informing her that her case was closed. Appellant received a letter on June 26, 2002 requesting that she report to work on June 29, 2002. Appellant attempted to begin work on this date but management gave her conflicting instructions as to where and when she was to commence working. When the postmaster asked her when she could begin working, appellant told him she could start on July 13, 2002. Appellant alleged that when she received her pay stub for this period she was given leave without pay for the hour she worked as a letter carrier. Although appellant alleged that management reassured her that she would receive an adjustment based on her actual hours worked, she was later told by a supervisor that she would be paid at a Level 5 for the pay period beginning June 29, 2002, instead of Level 6, her regular pay rate, because she had been documented as working as a letter carrier at the Kilmer Facility as of June 29, 2002. She went to the employing establishment's Employee

[1] The record contains a copy of the May 20, 2002 EEO draft settlement agreement. Pursuant to this draft agreement, appellant agreed to furnish management with as much information as possible on the other trainee who did not complete the postal police training and was returned to her work site as an unassigned regular; management, after receiving this information from appellant, agreed within two weeks to research this issue and make a determination of whether both employees were treated similarly; if management's research determined that appellant was in fact treated differently than the other employee who did not complete the police training program, her situation would be adjusted in accordance with the other employer in order to ameliorate the discriminatory impact; in the event that management discovered that appellant was not similarly situated or treated differently they would immediately inform appellant; the postmaster agreed to secure a uniform allowance for appellant, and to set up a meeting with appellant and her supervisor no later than May 30, 2002 to discuss these issues. The agreement was signed by appellant, management and the EEO mediator.

Assistance Program for counseling because she became depressed. Appellant related that she experienced insomnia, crying, restlessness, tension, hopelessness and difficulty sleeping due to the problems she experienced at her job.

In a report dated September 25, 2002, Dr. Michael Feldman, Ph.d, a clinical psychologist, diagnosed adjustment disorder with significant depressive and anxious features. Dr. Feldman stated that appellant had appeared tired, tearful, irritated and frustrated due to the employing establishment's treatment of her since she failed the police training program. Her symptoms included frequent crying, inability to enjoy her usual activities and daily routines. Dr. Feldman related that appellant's condition had been exacerbated by the fact that her mother had contracted cancer, but noted that her mother's condition had been in remission lately and that most of her emotional problems were attributable to the way the employing establishment had allegedly treated her. He concluded that her problems at work continued to aggravate her anxiety and depression, culminating in her current disabling condition.

By decision dated February 13, 2003, the Office denied appellant's claim, finding that the evidence of record failed to establish that an emotional injury was sustained in the performance of duty.

By letter dated February 26, 2003, appellant requested a hearing, which was held on October 29, 2003.

By decision dated January 16, 2004, an Office hearing representative affirmed the Office's February 13, 2003 decision.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion evidence establishing that compensable employment factors are causally related to the claimed emotional condition.[2] There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.[3] In other words, in order to discharge her burden to establish her occupational disease claim for an emotional condition, appellant must submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[4]

If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the

[2] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[3] *See Ruth C. Borden*, 43 ECAB 146 (1991).

[4] *See William P. George*, 43 ECAB 1159, 1168 (1992).

matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.[5]

ANALYSIS

The Board finds that the evidence of record pertaining to administrative and personnel actions taken by management in this case does not establish error, and therefore do not constitute factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act, unless there is evidence that the employing establishment acted unreasonably.[6] In the instant case, appellant has presented insufficient evidence that the employing establishment acted unreasonably or committed error with regard to her reassignment to work following the police training program. Appellant alleged that the employing establishment acted in a discriminatory manner with regard to the way she was treated after returning to work at the employing establishment. In the May 20, 2002 draft settlement agreement, appellant agreed to provide information corroborating her allegation that a similarly situated employee was allowed to reassume a position as a regular, full-time postal clerk. The employing establishment, for its part, agreed to investigate appellant's concerns and take remedial action if her allegations were corroborated. Although appellant alleged in her written statement that management also told her she would regain her regular status, have her seniority restored and receive back pay, sick and annual leave and holiday pay extending to the date she began the police training program, she failed to provide documentation to support these assertions. She did not submit evidence that management ignored EEO conference's recommendations. The Board has held that denials by an employing establishment of a request for a specific job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a certain position.[7] The facts do not establish a factor of employment. Appellant has failed to submit sufficient evidence to establish her allegations that the employing establishment committed error or abuse in failing to secure her former position as a mail clerk after she returned from the postal police training program, and in failing to provide her with the same treatment accorded a similarly situated employee.

Management personnel agreed to investigate appellant's claims of discriminatory treatment in the May 20, 2002 meeting and take action in the event these claims were verified. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[8] Appellant's allegation that her union told her she was ineligible to file a grievance when she returned from the police training program because she no longer worked as a mail clerk is not compensable. The Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of

[5] *Id.*

[6] *See Alfred Arts*, 45 ECAB 530 1994.

[7] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[8] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

employment or performance of duty.[9] Appellant's disagreement with the union regarding the handling of her claim is not a compensable factor of employment.

Appellant did not establish her allegations that management gave her contradictory and confusing instructions as to where and when she was to commence working when she returned to work in June 2002 and that, although management reassured her she would receive an adjustment based on her actual hours worked, she was later told by a supervisor that she would be paid at a lesser pay rate for the pay period beginning June 29, 2002 because she had been documented as working as a letter carrier at the Kilmer Facility as of June 29, 2002. Accordingly, a reaction to such factors does not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of agency error or abuse such personnel matters were not compensable factors of employment.[10]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 2, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[9] *See Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

[10] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).