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ESSIE J. BAKER, Appellant)	
)	
and)	Docket No. 03-945
)	Issued: February 17, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Brentwood, MD, Employer)	
)	

Case Submitted on the Record

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

On February 28, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 9, 2002, denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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

On May 11, 2001 appellant, then a 52-year-old modified clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her federal employment caused her to experience major depression and an anxiety disorder. Appellant's medical history includes several work-related injuries: a back injury in 1981; a fractured ankle in 1984; injuries to her back, neck and shoulders in 1985; after falling down while delivering

mail; a cervical and lumbar strain in 1985; and injuries to her right wrist, shoulder and ankle following a fall in 1995. Appellant also injured her knee in 1998 and has not worked since February 3, 2000, when she injured her knee again after slipping on ice in the parking lot. Appellant attributed her emotional condition to several factors, including continuous pain and the impact of losing her physical abilities. She alleged the employing establishment illegally changed her employment status from a modified carrier to a part-time flexible clerk position resulting in a loss of benefits and that the workers' compensation specialist, Toni Greer, failed to submit her Form CA-7 in a timely manner. Appellant also alleged that she was exposed to asbestosis in 1997, that caused her to cough up blood and placed her in imminent danger of death. In 1994, she was frequently uprooted and required to change work locations and she was verbally attacked in front of other employees by her supervisor, Lela Franklin because she was an injured worker. Appellant added that there were numerous violent confrontations with management that contributed to her condition. Appellant also alleged that, when she returned to a modified position, she was required to work nights which she did not want to do as she had young children. After her knee injury in 1998, she was not allowed to see her treating physician and that she received poor treatment from an employing establishment physician, which led to her 2001 knee injury. Appellant alleged that she was sexually harassed in 1970, when she started working at the employing establishment. Appellant alleged that she was denied a special chair following her back injury in 1981.

The record contains an August 18, 1997 progress note from Benilda Shaheed, a licensed clinical social worker with Kaiser Permanente, who stated that appellant felt harassed at work since returning from an injury in 1996. She diagnosed an anxiety disorder. In an October 21, 1997 report, Tracy McDonald, also a licensed clinical social worker with Kaiser Permanente, noted that appellant felt harassed and discriminated against work after being downgraded to a part-time flexible clerk from a modified carrier. Ms. McDonald diagnosed a depression disorder. In an October 23, 1997 Equal Employment Opportunity (EEO) complaint, appellant alleged that a criminal act of fraud and misrepresentation was perpetrated against her when a rehabilitation job offer for the modified clerk position that she accepted was changed to a part-time flexible clerk position.

In a December 1, 1999 letter to a congressional representative, Mitch King, manager of government relations stated that appellant's job was changed from a modified clerk to a part-time flexible clerk as required by an arbitration decision, that was later overruled, and that appellant was reassigned to her modified clerk position. In an August 4, 2000 report Dr. Hampton Jackson, an orthopedic surgeon, stated that appellant presented as extremely depressed due to severe concerns about her ability to work in the future and tremendous financial pressure.

In an August 11, 2000 letter, the employing establishment noted that appellant was never denied the opportunity to see her personal physician and that her claims were forwarded to the Office in a routine way. In a September 1, 2000 report, Dr. Jackson indicated that appellant was still significantly depressed and that she was totally disabled from work due to her back and knee problems.

In a December 18, 2000 report, Dr. Kenneth R. Smothers, a psychiatrist, noted that appellant received psychotherapy for a mood disorder due to her lumbar disc syndrome, left knee

pain and generalized somatic pains with depressive features and accompanying anxiety. He opined that her mood disorders were causally related to her job-related injuries, which produced chronic pain and other stressors created at the workplace. Dr. Smothers stated that appellant also complained of harassment and threats from her employer. He concluded that appellant's current condition, depression, has been caused or exacerbated by the chronicity of her injuries and a recent fear of asbestosis exposure in 1997.

In a February 27, 2002 decision, the Office denied appellant's claim finding that she had failed to establish a compensable employment factor.

Appellant requested a hearing that was held on September 17, 2002. At the hearing appellant repeated her allegations and stated that she filed the emotional condition claim because she was in constant pain and wished to have her emotional condition treated. Appellant's representative noted that appellant's condition was also caused by the fact that she felt she could not support her two sons and felt financial pressure after undergoing two bankruptcies. In a December 9, 2002 decision, the hearing representative affirmed the September 17, 2002 decision finding that appellant failed to establish that her emotional condition was caused by a compensable employment factor.

LEGAL PRECEDENT

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 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.¹ 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 frustration from not being permitted to work in a particular environment or to hold a particular position.²

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.⁵ 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.⁶

ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated December 9, 2002, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether the alleged employment incidents are covered employment factors under the terms of the Act.

Appellant alleged that she was sexually harassed at the employing establishment in 1970 and discriminated against when her job was changed from a modified clerk position to a part-time flexible clerk position because she was an injured worker. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁸ The employing establishment denied that appellant was subjected to harassment or discrimination, explaining that her job was changed as required by an arbitration decision. Regarding her claims of sexual harassment, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers at any time.⁹ Appellant submitted no evidence related to the sexual harassment claim. Appellant alleged that Ms. Franklin, a supervisor made statements and engaged in actions, which she believed constituted harassment and discrimination; however, she did not provide additional detail or supporting evidence, such as witness statements, to establish that the statements alleged were actually made or that the alleged actions actually occurred.¹⁰ Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992).

Appellant alleged that she was discriminated against because she was required to change job locations frequently. The employing establishment explained that these changes were the result of arbitration agreements. Appellant has not supplied sufficient evidence to rebut the employing establishment's explanation. Furthermore, the Board finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹¹ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹² The evidence submitted to the record does not establish error or abuse in these administrative matters.

Appellant alleged that the employing establishment improperly proposed to change her work shift from the daytime to the nighttime and that she was denied a specific chair. As noted above, disability is not covered where it results from such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. On the other hand, the Board has held that a change in an employee's work shift may under certain circumstances be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.¹³ Appellant contended assertion that the proposed change in work shift was made contrary to the relevant policy relates to an administrative function of the employing establishment. To show that an administrative action such as the proposed change in work shift and denial of a chair implicated a compensable employment factor appellant would have to show that the employing establishment committed error or abuse.¹⁴ Appellant has not provided sufficient evidence to establish such actions on the part of the employing establishment. Thus, appellant has not established a compensable employment factor under the Act with respect to the proposed change in work shift.

Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁵ Appellant alleges that she was verbally attacked by her area manager, Ms. Franklin because she was an injured worker and that there were other violent confrontations with management. Appellant did not provide any specific details, such as dates of the confrontations, the participants or what exactly was said. Appellant was equally vague about the alleged verbal attack by Ms. Franklin. Without more detail of the confrontations and verbal

¹¹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹² *Id.*

¹³ See *Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

¹⁴ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁵ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

attacks appellant has not shown how they rise to the level of verbal abuse or otherwise fall within the coverage of the Act.¹⁶

Regarding appellant's allegations that the employing establishment mishandled her compensation claims, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.¹⁷

Appellant has alleged one factor that is compensable employment factor. She noted in her Form CA-2 and at the hearing that her emotional conditions were due to chronic pain experienced from her numerous accepted injuries. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.¹⁸ This allegation is supported by the December 18, 2000 report Dr. Smothers, who noted that appellant received psychotherapy for mood disorder due to her lumbar disc syndrome, left knee pain and generalized somatic pains with depressive features and accompanying anxiety. He opined that her mood disorders were causally and temporally related to her job-related injuries, producing chronic pain and other stressors created at the workplace. He concluded that appellant's current condition, depression, has been caused by and or exacerbated the chronicity of her injuries.

In the present case, appellant has established a compensable factor of employment with respect to chronic pain resulting from accepted injuries. The Office must base its decision on an analysis of the medical evidence.¹⁹ Since the Office found that there were no compensable employment factors, it did not analyze the medical evidence.

CONCLUSION

The case will be remanded to the Office for an appropriate decision based on an analysis of the medical evidence.

¹⁶ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

¹⁷ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

¹⁸ See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

¹⁹ See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision by the Office of Workers' Compensation Programs dated December 9, 2002 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Issued: February 17, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member