United States Department of Labor
Employees' Compensation Appeals Board

BEVERLY DEMERY, Appellant	)	
and	)	**Docket No. 04-927**
	)	**Issued: October 29, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

Appearances:
Beverly Demery, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 25, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' hearing representative dated November 25, 2003 denying her emotional condition claim on the grounds that it was not sustained in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition case.

ISSUE

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

FACTUAL HISTORY

On August 8, 2002 appellant, then a 44-year-old labor relations specialist, filed an occupational disease claim alleging that after a meeting with her manager, her work environment worsened which caused her stress and severe depression. She first became aware of the claimed condition and its relation to work factors on June 26, 2002.

In an August 6, 2002 statement, appellant alleged that her work positions and location were changed and that she was not given an office. She was questioned by her district manager concerning conversations regarding the removal of the former president, Princella Edwards, and regarding union activities involving Frankie Sanders, a union official. Appellant alleged that D.L. Beasley, a coworker, was chosen for a position instead of her. She was threatened with removal from her position as a labor relations specialist. Appellant complained that she was charged with failure to follow instructions, for failing to sign a confidentiality agreement and that Pat Syal, the acting manager of labor relations, and Mr. Wilson, the district manager, failed to provide information concerning statements she was accused of making. She alleged that she was subjected to harassment since picking up an Equal Employment Opportunity (EEO) claim form and given a predisciplinary interview and a letter of warning for repeated failure to follow instructions. Appellant was not allowed to complete her assignments at the plant and was subjected to close scrutiny by her manager. Appellant indicated that her requests for a change in her work environment and personal leave on August 2, 2002 were denied.

In letters dated June 19 and July 20, 2002, addressed to George Lopez, the vice president of operations, appellant repeated her allegations. She alleged that she was threatened with removal when the employing establishment believed that she was not going to help the human resources office. Appellant indicated that her work environment was hostile and referred to a meeting on July 20, 2002 during which she met with Mr. Wilson, who was visibly angry and yelled at her. At the conclusion of the meeting, he attempted to have her sign a confidentiality agreement, which she refused. Appellant stated that after the meeting, she began to have medical problems related to her work environment as the tension became unbearable. Appellant went on sick leave and received a letter of warning while at home. Mr. Beasley instructed her to pick up a case file while she was on leave.

In a June 25, 2002 email, Virginia West, a coworker, advised that she never mentioned to Mr. Beasley how many grievances appellant had processed. She indicated that in her initial conversation with Mr. Beasley, she thought they had approximately 121 grievances, however, she subsequently determined there were 33.

In a July 22, 2002 disability certificate, Dr. Lillian Chan, a family practitioner,[1] diagnosed adjustment disorder with mixed anxiety and depressed mood. She indicated that appellant should be off work from June 26 to July 19, 2002 and could return to work on July 22, 2002. On July 24, 2002 Dr. Chan advised that appellant was under stress while working for her supervisor and should transfer to a different department.

[1] There was no listing in the Board-certification directories.

In a July 26, 2002 letter, appellant contended that the allegations of Mr. Beasley and Ms. Syal were false. She alleged that on June 12, 2002 she reported to the labor relations office and received no instructions from Mr. Beasley that day. When she asked him what she would be doing, he advised her to do plant work and that another worker, Ms. Robinson would handle the area Ms. Harrison formerly had. She denied that a conversation occurred regarding Ms. Syal or Mr. Wilson. Appellant reported to work on Monday, June 17, 2002 and explained that she had things to finalize at the plant, including grievances and was informed to stop making announcements that she was leaving the employing establishment. She explained her rationale for not handling a case in August, as she was on leave. Appellant explained that she thought she had to testify at a hearing and did not find out she was not needed until she read the witness list on July 26, 2002. Regarding her refusal to sign a confidentiality agreement, appellant explained that she wanted to check with the legal department and was suspicious, about the request. She alleged that no one had ever been disciplined for refusing to sign a form. Appellant denied that she had not done her work, that she had not refused to follow instructions and that she had completed all work except for a few specific items which she was not allowed to complete.

In statements dated July 26 and August 2, 2002, Anita Hall and Wendell Greenleaf, labor relations specialists, indicated that there was a problem between appellant and Mr. Beasley which arose when Mr. Beasley took over the job as acting manager from appellant. In an August 6, 2002 witness statement, Clyde Phillip, a labor relations specialist, indicated that when appellant was replaced as the acting manager, she was not pleased with the decision and did not report to work for an undetermined amount of time. He did not believe there was a hostile work environment.

By letters dated September 3 and 20, 2002, the employing establishment controverted appellant's claim and provided a statement from Mr. Beasley, the acting manager of labor relations. He indicated that his daughter died on February 26, 2002 and that appellant became the acting manager while he was away from work. Mr. Beasley indicated that she was given an office and accommodated with virtually every request to help with the transition, including granting all of her leave requests, with the exception of August 2, 2002. He explained that appellant had a problem with being at the annex and denied that she was not allotted sufficient time to close out her projects at the plant. Mr. Beasley denied having direct knowledge regarding a meeting with Mr. Wilson and alleged that appellant was untruthful on several occasions regarding her backlogged grievances and a hearing.[2] He confirmed that appellant refused to sign the confidentiality agreement that everyone at the employing establishment was required to sign and that she had failed to follow instructions. Mr. Beasley denied having direct knowledge of appellant retrieving an EEO form. He confirmed that she was given a predisciplinary interview and a letter of warning for failure to follow instructions. Mr. Beasley explained that this occurred because appellant refused to report to the labor relations office on June 13, 2002. He explained that, when questioned, appellant indicated that she was working on back logged work at the plant. Mr. Beasley also indicated that she would announce out loud that she was leaving the employing establishment and, despite being given both oral and written instructions, refused to stop making such announcements. He indicated that he had to check up

[2] A copy of the witness list was included from Eric B. Fryda, a law department employee and appellant was not listed.

on appellant and look at her turnstile rings. Mr. Beasley noted that appellant had created a stressful environment for her coworkers and that her claim of a hostile work environment had been investigated and determined to be unfounded.[3] Regarding her allegation concerning her leave request on August 2, 2002, he explained that it was denied because appellant had not worked four hours and he had not received advanced notification. Mr. Beasley denied that appellant's work load was stressful and noted that he had to reassign her work as she rarely worked an entire day and left work early on an almost daily basis.[4] He indicated that every accommodation was made to make her transition as smooth as possible, including providing her old office, granting her requests for discipline and to attend a Dallas grievance blitz, granting most of her leave requests and granting additional EEO training. Mr. Beasley provided a position description and indicated that there was no staffing shortage during June and July 2002 and no additional work load was placed on appellant. He noted that she received a seven-day suspension and a letter of warning for failure to follow instructions and for unauthorized absence from the work area.

In an October 3, 2002 statement, Ms. Syal, confirmed that, about September 2001, appellant was informed that she would return to her position as a labor relations specialist at the annex and was unhappy about the decision. She was aware that the manager of labor relations position was a detail of an undetermined length. Ms. Syal indicated that appellant was afforded the opportunity to close out her projects and transfer her files. She explained that appellant was perceived as being influenced by Frankie Sanders, a national business agent for the union, and she advised that if appellant failed to support the labor relations unit, she would be removed from the position. Ms. Syal also confirmed that a meeting had taken place with appellant regarding her criticism of management that no records existed for conversations with certain individuals and that appellant refused to sign confidentiality agreements that all human resources personnel were required to sign. She denied that a hostile work environment existed or occurred when appellant copied her EEO complaint form. Ms. Syal addressed appellant's absence from her assigned work area and her second predisciplinary interview and indicated that appellant failed to follow instructions and failed to return after a retirement party. Appellant left work alleging an illness but failed to provide medical documentation. Ms. Syal noted that appellant's allegations of an unsafe work environment were unsubstantiated.

In an October 16, 2002 report, Dr. Chan advised that appellant had accepted a new position in Dallas and her symptoms of depression, which were related to the hostile job environment in Houston, had resolved.

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[3] In a July 25, 2002 report, investigating the issue of an unsafe work environment, it was determined that appellant was referring to a work environment that dealt with her career and livelihood and not regarding a threat of violence in the work environment. On September 5, 2002 the Office received an August 12, 2002 threat assessment investigative report, which contained a finding did not support appellant's allegations of a hostile work environment in the labor relations office. However, it was noted that there was tension between appellant and Mr. Beasley.

[4] In statements dated September 20, 2002, Karen Trimm, a human resources associate, indicated that part of appellant's work load had been reassigned to her. Additionally, Norma Ramirez, a labor relations specialist, indicated that Mr. Beasley had to reassign work from appellant on more than one occasion during the months of June and July 2002.

In a November 23, 2002 response, appellant indicated that her grievances had not been resolved. She denied outside sources of stress and explained that, when she accepted a new position at the plant, the work environment changed and she had to relocate. Appellant alleged that she was treated differently by her managers and coworkers experienced an increase in her work load, was separated from other staff, denied supplies and left out of meetings and training. Appellant stated that her request to be moved was denied, that she received disparate treatment after filing an EEO complaint, including discipline for failure to follow instructions, which was untrue. She indicated that Mr. Beasley was not a party to her conversation with Ms. Syal, denied that she had taken more personal leave than any other specialist or that she had not completed her work assignments. Appellant denied that she informed Mr. Beasley that she was unhappy and would drop projects or that she refused to handle arbitrations. Additionally, she indicated that she was never absent from duty and did not leave a retirement party early[5] and that she had not left any tasks uncompleted.

In a January 31, 2002 decision, the Office denied appellant's emotional condition claim finding that she had not established any compensable factors of employment.

On February 10, 2003 appellant requested a hearing which was held on September 4, 2003 and repeated her previous allegations.[6]

On October 1, 2003 the employing establishment submitted responses to the hearing transcript. The employing establishment denied that appellant was subjected to harassment and alleged that her feelings of stress and depression were self-generated when her performance issues were addressed. The employing establishment noted that the manager of labor relations position was initially offered in one to two week details and when no response was received, the detail was extended to 30 days. Regarding appellant's request for an office, she had requested a specific room that she had five years earlier; however, someone else was using that office. Eventually appellant returned to the requested office. The employing establishment denied that she was forced to accept the manger of labor relations detail. The employing establishment also advised appellant that the plant was closing and she would work in the annex and denied that she was forced to work 12 to 14 hours per day or that she was not given adequate time to complete her work. Attempts to communicate with appellant regarding the number of days she worked at the higher level position were unsuccessful. The employing establishment also indicated that the district manager was not abusive but direct, that all employees were required to sign updated confidentiality agreements, that appellant did not properly appeal her grievance decisions to the proper level and that she had a month prior to her arbitration to advise the employing establishment that she had a conflict.

On October 7, 2003 appellant alleged that on three separate occasions from March to May 2002, her integrity was questioned. She denied allegations that she was removing discipline from the former president of the American Postal Workers Union, Ms. Princella Edwards; that

[5] In an August 2, 2002 witness statement, Wendell Greenleaf, a coworker, confirmed that he spoke to appellant after the retirement party.

[6] Appellant provided an undated EEO affidavit containing 31 issues and a copy of a June 21, 2002 EEO resolution did not contain any findings that her manager's actions were unethical or unlawful.

she was allowing a business agent, Mr. Sanders, to run the local union through her or that she was preventing a settlement with the union based upon the fact that she did not like a coworker named Linda Castillo.

On October 10, 2003 Mr. Beasley confirmed that appellant made a statement to him that she was not going to help the labor relations office, noted that she had previously signed a confidentiality form and denied that he was untruthful. He added that appellant repeatedly refused to report to the annex and failed to follow instructions.

By decision dated November 25, 2003, an Office hearing representative affirmed the Office's January 31, 2003 decision, finding that appellant had not established any compensable factors of employment.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview 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 deemed 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 hold a particular position.[8] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[9]

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 November 25, 2003, the Office hearing representative affirmed the January 31, 2003 decision which denied appellant's emotional condition claim on the grounds that she did not establish any compensable

[7] *See Kathleen Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

[8] *Lillian Cutler*, 28 ECAB 125 (1976).

[9] *Ruthie M. Evans*, 41 ECAB 416 (1990).

employment factors. The Board must, thus, initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

Appellant alleged that the employing establishment engaged in improper disciplinary actions, denied her a promotion, refused to give her an office in the location that she preferred, wrongly denied leave, improperly assigned work duties, unreasonably monitored her activities at work, such as requesting the turnstile rings regarding her entries and exits, instructed her not to make loud announcements when she left the building and failed to provide adequate training. The Board finds that these allegations relate 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.[10] However, the Board has also found 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.[11]

The Board has long held that the assignment of a work schedule is an administrative function of the employing establishment and, absent error or abuse, does not constitute a compensable factor of employment.[12] The employing establishment denied appellant's allegations that she was denied a promotion, denied assistance with her transition and advised that her leave requests were granted with one exception. The employing establishment noted that she did not like being at the annex, but had granted almost all of her leave requests, including her request to go to Dallas. Both Mr. Beasley and Ms. Syal indicated that appellant had failed to follow instructions on several occasions, including refusing to sign a confidentiality agreement. Although appellant alleged that the employing establishment engaged in discrimination and harassment, she did not provide sufficient evidence to support her allegations. She did not submit witness statements or other support for her claim to establish that the allegations occurred. Appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Regarding appellant's allegation that she developed stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[13]

Appellant alleged that Mr. Beasley was selected over her for a promotion. The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's

[10] *See Penelope C. Owens*, 54 ECAB __ (Docket No. 03-1078, issued July 7, 2003). Assignment of work is an administrative or personnel matter of the employing establishment and coverage can only be afforded where there is a showing of error or abuse. *Robert W. Johns*, 51 ECAB 137 (1999); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[11] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

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

[13] *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

ability to perform his or her regular or specially assigned work duties, but rather constitute his or her desire to work in a different position.[14]

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. She alleged that she was subjected to increased harassment after she picked up an EEO form. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[15] 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.[16] In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and Mr. Beasley denied having direct knowledge that appellant had filed an EEO form. Appellant has not submitted evidence sufficient to establish that she was harassed or discriminated against by her supervisors. She alleged that supervisors made statements and engaged in actions which she believed constituted harassment, but she did not provide evidence, such as witnesses' statements, to establish that her allegations statements were factual or that the actions occurred in the manner alleged.

Appellant alleged that Mr. Wilson yelled and screamed at her. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by appellant and supported by the evidence, may constitute a compensable factor of employment.[17] However, the employing establishment denied that appellant was yelled at or screamed at by the district manager; noting however, that he was direct. Appellant did not submit any statements or evidence to support that she was yelled at by Mr. Wilson. The evidence, therefore, is insufficient to indicate that the employing establishment engaged in verbal abuse of appellant and this factor is not a compensable factor of employment.

The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.[18] However, appellant made only a general reference to a heavy work load and alleged that she was not given enough time to close out her projects and other work at the plant. The employing establishment denied that she was not given time to close out her cases and in fact, offered evidence to show that she was asked how much time she needed and that some of her work was given to others. The Board finds that she has not established a compensable factor under *Cutler*.

Appellant alleged stress caused by a hostile environment which occurred when Mr. Beasley received a promotion. She alleged that after that, she was treated differently. The Board has held that an employee's dissatisfaction with perceived poor management constitutes

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

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

[16] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[17] *Janet D. Yates*, 49 ECAB 240 (1997).

[18] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[19] The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated, in that it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.[20]

Appellant also alleged that she was questioned regarding the alleged use of union business during work hours and conversations she may have made about coworkers. 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 employment or performance of duty.[21]

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors.[22]

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal employment.[23]

[19] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[20] *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

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

[22] The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.

[23] Following the issuance of the Office's November 25, 2003 decision, appellant submitted additional evidence. However, the Board may not consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member