United States Department of Labor
Employees' Compensation Appeals Board

DIANA LIU, Appellant	)	
and	)	**Docket No. 04-2014**
	)	**Issued: January 27, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Oakland, CA, Employer	)	

Appearances:
James Wright, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On August 9, 2004 appellant filed a timely appeal from the May 13, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's decision.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 4, 2002 appellant, then a 53-year-old general clerk, filed a claim alleging that her emotional condition related physical symptoms were a result of her federal employment. She identified a coworker as the source of her problems: "Stress caused by co-worker Theresa Stevenson. She kept coming to my desk and teasing me. She does not leave me alone when I

asked. She lied and took advantage of me. This caused much stress." Appellant first became aware of her condition on September 24, 2002.

Appellant submitted medical evidence stating that, if the allegations were true, her severe major depression with anxiety features was caused by supervisory abuse by Ms. Stevenson. She also submitted statements from coworkers Carla Neal, who supported that appellant did not feel well on September 24, 2002, and Cheri Rogers, who stated that the communication between appellant and Ms. Stevenson "was not always pleasant." The supervisor of mails, Frank J.M. Grimsley, II, advised that the information appellant provided could not be substantiated or established as credible. But he acknowledged a conflict between appellant and Ms. Stevenson: "Information, evidence and documents indicate that working relations between [appellant] and Ms. Stevenson are less than desirable, mostly as a result of [appellant's] documented inappropriate conduct and behavior towards Ms. Stevenson. [She] has been given every opportunity to provide creditable statements, evidence and or documents to support her claim of harassment from Ms. Stevenson, [none] has been forth coming."

In a decision dated June 6, 2003, the Office denied appellant's claim for compensation. The Office found that she had established no compensable factor of employment.

At a hearing before an Office hearing representative, appellant testified that nobody saw what Ms. Stevenson did to her. She also alleged that management harassed her.

In a decision dated May 13, 2004, the hearing representative affirmed the denial of appellant's claim for compensation.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[2] "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[3]

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.[5] The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[6] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[7] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[8]

ANALYSIS

Appellant's primary argument is that she is entitled to workers' compensation benefits because Ms. Stevenson, a coworker, caused her much stress. Friction between coworkers can cause a compensable injury,[9] and the evidence in this case generally supports friction between appellant and Ms. Stevenson. Cheri Rogers, a coworker, stated that the communication between appellant and Ms. Stevenson "was not always pleasant." Mr. Grimsley, supervisor of mails,

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

[5] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

[6] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[7] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[8] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[9] *Monica M. Lenart*, 44 ECAB 772 (1993).

stated that the working relationship between appellant and Ms. Stevenson was "less than desirable."[10] But such statements are far too vague to permit a finding that Ms. Stevenson harassed appellant in any specific way on any specific occasion. Appellant testified at the hearing that nobody saw what Ms. Stevenson did to her, so the only evidence she has to support her claim of harassment is her own account of events, her own perception of how Ms. Stevenson treated her. Her perception might be accurate; Ms. Stevenson might have harassed appellant just as she describes, but the Board cannot make such a finding because the record contains no evidence verifying her specific allegations. So the basic problem with appellant's claim, and the reason the Board will affirm the Office's decision, is that she has submitted no probative evidence to substantiate that Ms. Stevenson did in fact harass her. She has not established a factual basis for her claim.

Appellant also contended that management harassed her, but she again submitted no probative evidence to support her allegations. On November 10, 2003 a labor relations specialist agreed to settle all issues pertaining to a Step 3 grievance: "Management should comply with [s]ection 864.32 of the ELM when instructing employees to fitness-for-duty examinations. Management should provide the specific reasons for the examination to the grievant." This agreement falls short of acknowledging an administrative error and provides no factual basis for appellant's claim. An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim.[11] Appellant has not met that burden.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. She has submitted no probative evidence to establish as factual any specific instance of harassment or administrative error.

[10] In denying her EEO complaint, a federal administrative judge noted on February 26, 2004 that management investigated the incidents cited by appellant and concluded that "all of the matters alleged by complainant were the product of ongoing and unrelenting workplace interpersonal disputes between complainant and other members of the agency staff, including her supervisors." The judge found no evidence disputing the conclusion following management's investigation that the conflict at issue related solely to an ongoing interpersonal dispute mainly between appellant and her coworker.

[11] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member