United States Department of Labor
Employees' Compensation Appeals Board

DELORES CHARLES, Appellant	)	
and	)	**Docket No. 05-1043**
	)	**Issued: November 16, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Delores Charles, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On April 5, 2005 appellant filed a timely appeal from the March 18, 2005 merit decision of the Office of Workers Compensation Programs which denied modification of a January 18, 2005 decision denying her claim for an emotional condition 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 case.

ISSUE

The issue is whether appellant established that her emotional condition was sustained in the performance of duty.

FACTUAL HISTORY

On May 27, 2004 appellant, a 35-year-old computerized forward systems clerk, filed an occupational disease claim alleging that on September 20, 1998 she first realized her anxiety was due to job stress. She attributed her condition to harassment by Willie Dukes, a supervisor, which included, making "smart remarks" to appellant publicly and in private as well as, "talking

about me and my family and other personal (sic) issues." Appellant stopped work on May 28, 2004 and has not returned.

In a June 3, 2004 treatment note, Lydea Alexander, a physician's assistant -- certified, diagnosed anxiety reaction and tension headaches. She concluded that appellant was "unable to work."

On June 14, 2004 the Office received a statement from appellant containing allegations of threats, harassment, verbal abuse, retaliation and sexual remarks by Mr. Dukes. She contended that on May 27, 2004 he "ran upon me quickly and told me that 'I was full of it' and that 'I am a trip' on the workroom floor." Appellant also contended that Mr. Dukes has been hostile, disrespectful and unpleasant to her since he became her supervisor in 1998. On May 25, 2004 she alleged that he allowed everyone in her unit, but appellant "to leave early due to light mail at 8:00 am." Two hours later he told her she could leave as "everyone else has left," which appellant contends "is obvious harassment." With regards to leave request, she contended that the employing establishment improperly denied her leave to attend a funeral, denied her prenatal medical appointments in 1998, her requests for maternity leave required four signatures, denied her request for leave under the Family and Medical Leave Act (FMLA), was told it was unnecessary for her to be with her son during his heart surgery and cancelled her vacation leave. Appellant also alleged that she was called a liar in front of an employee on the workroom floor and that management is constantly watching her and putting food items in trashcans outsider her unit. She also contends that the employing establishment improperly issued disciplinary actions against her and harassed her "numerous times at the console on the workroom in front of" coworkers.

On June 14, 2004 the Office also received a June 8, 2004 statement by Sharonne Hughes, expedited services specialist; a June 7, 2004 statement by LaKeisha Hailes, manager, customer service; a June 8, 2004 statement by Joan Henry, manager; a June 8, 2004 unsigned statement and June 9, 2004 statement by Mr. Dukes; a June 8, 2004 statement by Daisy M. North, manager; suspension letters; a January 7, 2000 letter regarding inappropriate behavior by appellant by Delores Scals, manager and absence analysis for the years 1998, 2001 and 2004.

Both Ms. Hughes and Ms. Hailes indicated that they had not found any harassment after conducting investigations into appellant's allegations. Ms. Hughes and Ms. Hailes also noted that Mr. Dukes issued letters of warning to appellant due to "her continued failure to maintain regular attendance." With regards to complaints filed against Mr. Dukes, Ms. Hughes noted that hearings were held and "no evidence of harassment or discrimination" was found by the judge. Ms. Henry noted that she had also investigated allegations by appellant and determined that they were unfounded. Moreover, she stated that appellant had problems with her attendance which resulted in "a 7-day suspension and 2 14-day suspension (sic)." Mr. Dukes denied her allegations. Ms. Norton noted that appellant "filed numerous complaints against Mr. Dukes," which "were dismissed due to (sic) lack of evidence."

By decision dated September 23 2004, the Office denied appellant's claim on the grounds that she failed to establish that her condition was sustained in the performance of duty.

On September 27, 2004 the office received a September 20, 2004 letter regarding allegations appellant made about Mr. Dukes on her claim form and an undated letter from her responding to the letter. The letter informed her that the investigation revealed "no evidence of harassment, threats or sexual improprieties that exist in the CFS unit."

On September 28, 2004 the Office received a copy of a mediation settlement regarding appellant's leave for her 1999 pregnancy, a December 16, 1978 temporary light-duty assignment, a July 22, 1999 certification for leave under the FMLA, a March 26, 1999 disability note, a February 11, 2003 verification of medical treatment, an October 29, 1998 note requesting restrictions due to appellant's pregnancy, a September 18, 2004 statement by her, a March 13, 2003 decision denying her reconsideration request by the Social Security Administration (SSA),[1] a June 16, 1999 letter from the employing establishment regarding leave without pay and submission of future requests and leave requests filed on May 18, 1999 for the period July 17 to October 22, 1999, which was disapproved due to "services needed as scheduled." The mediation agreement dealt with scheduling as many medical appointments on her days off as possible and that she agreed "to submit requests for doctor's appointments and to indicate whether leave is to be considered FMLA leave."

On October 4, 2004 the Office received appellant's undated request for reconsideration. She contended that the Office failed to comply with its regulations as she never received a letter regarding development of her claim.

On October 6, 2004 the Office also received additional evidence from appellant, including a rescission of an April 15, 2004 14-day suspension letter, a group grievance filed by her regarding the use of sexual language by Mr. Dukes, grievance settlement forms and an undated letter from William G. Flanagan, union representative and clerk craft director, in support of her claim.

The June 30, 2004 step 2 grievance settlement form regarding appellant's group grievance, management agreed "to treat all employees with dignity and respect in compliance with employing establishment's rules and regulations." Based upon a July 22, 2004 step 2 meeting, her April 15, 2004 14-day suspension was rescinded.

In the undated letter, Mr. Flanagan noted that appellant had filed Equal Employment Opportunity (EEO) complaints and grievances due to Mr. Dukes' harassment. He noted that based upon medical evidence submitted by her, the employing establishment "is currently accommodating a light-duty request to separate her from the supervisor and unit." Mr. Flanagan states that appellant has been subjected to harassment by Mr. Dukes since 1998 and disciplinary actions regarding her attendance had been issued, but were "rescinded due to procedure (sic) errors and/or disparity." Mr. Flanagan stated:

> "Evidence of the continuing harassment of [appellant] is relevant due to the fact that Mr. Dukes calls the office that she currently has been reassigned to verify hours and reporting habits of [appellant], this has occurred from July 2004 to present."

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[1] Appellant had filed a claim alleging she was disabled due to mental stress with the SSA.

On January 3, 2005 the Office received a December 27, 2004 response by Ms. Henry, manager; a July 17, 2000 settlement agreement regarding Ms. Flanagan; a June 9, 2004 supervisor's statement and undated statement by Mr. Dukes; a December 17, 2004 statement by Sharlene P. Vasser, supervisor, attesting to the unreliability of appellant and her excessive absences; statements dated June 8 and December 23, 2004 by Ms. Hughes, expedited services specialist also noting her excessive absences and that appellant was treated with dignity and respect and was not harassed; leave requests dated May 18, 1999 for December 1, 1998 and the period October 9 to November 5, 1999, which were disapproved.

By decision dated January 18, 2005, the Office vacated the September 23, 2004 decision, but denied her claim on the grounds that fact of injury had not been established.

In a letter dated January 29, 2005, appellant requested reconsideration. In support of her claim, she submitted a January 25, 2005 attending physician's report (Form CA-20), by Dr. Catherine E. Burley, statements dated November 4, 2004, January 29, 1995, an August 13, 2004 report by Raymond L. Hoobler, Ph.D, licensed psychologist, verification of treatment dated January 24, 2005, a June 18, 2004 employing establishment fitness-for-duty form.

In her November 4, 2004 statement, appellant noted the financial difficulties, including eviction from her home, dismissal of her bankruptcy case and loss of her "prepaid benefits," which she noted "has caused a great deal of additional stress and anxiety." She noted that she has been off work for four to five months and without pay since filing her claim. Appellant alleged that Mr. Dukes has harassed her since 1998 as well as making remarks about her family. She alleged that Mr. Dukes "misused his authority for too long," which" has caused a GREAT deal of Stress in my life." (Emphasis in the original.) With regards to her leave, appellant alleged that in 1998 Mr. Dukes denied all her "prenatal and doctor's visit" even though she qualified for leave under the FMLA. Due to the denial of her leave appellant alleged that she "had to hire a lawyer while I was on maternity leave and request that EEO expedite mediation" regarding approval for her leave. While in a light-duty position, appellant alleged that Mr. Dukes and Ms. Henry called the unit to verify her time, which she stated "added additional stress and anxiety."

By decision dated March 18, 2005, the Office denied appellant's request for modification.

LEGAL PRECEDENT

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

[2] *Leslie C. Moore*, 52 ECAB 132 (2000).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[3] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees Compensation Act.[4] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[5] When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from an 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 results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[6] 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[7]

In emotional condition claims, 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. 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]

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.[9] 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.[10] An employee's frustration from not being permitted to work in a particular environment or to

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[3] 28 ECAB 125 (1976).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Robert W. Johns*, 51 ECAB 137 (1999).

[6] *Lillian Cutler*, *supra* note 3.

[7] *Kim Nguyen*, 53 ECAB 127 (2001).

[8] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[9] *Felix Flecha*, 52 ECAB 268 (2001).

[10] *Kim Nguyen*, 53 ECAB 127 (2001).

hold a particular position is not compensable.[11] Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[12]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.[13]

ANALYSIS

Appellant attributed her stress to harassment by her manager, Mr. Dukes. She has not alleged that she developed an emotional condition due to the performance of her regular or specially assigned duties or out of a specific requirement imposed by her employment. Instead, appellant attributed her condition to harassment by her manager, Mr. Dukes, including the denial of leave, receiving disciplinary actions which she believed were unwarranted and showed harassment and discrimination by management. 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.[14] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation.[15] Appellant's contention that the employing establishment engaged in improper disciplinary actions relates to administrative or personnel matters, unrelated to her regular or specially assigned work duties and do not fall within the coverage of the Act absence evidence of error or abuse.[16] She has submitted no documentation supporting her contention that the employing establishment improperly issued her disciplinary actions. The only evidence appellant submitted was an April 15, 2004 letter which rescinded her 14-day suspension. The employing establishment submitted statements by Ms. Hughes and Ms. Hailes which noted that she was issued letters of warning due to "her continued failure to maintain regular attendance." Thus, appellant has not established that receiving the suspension letters constituted either error or abuse or harassment by the employing establishment.[17]

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[11] *Barbara J. Latham*, 53 ECAB 316 (2002).

[12] *Id.*

[13] *James E. Norris*, 52 ECAB 93 (2000).

[14] *Lori A. Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004).

[15] *Id.*

[16] *Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

[17] *See Bobbie D. Daly*, 53 ECAB 691 (2002) (disciplinary actions, absent a showing of error or abuse, generally fall outside the scope of coverage).

Appellant also contends that she was subjected to harassment, discrimination and improper sexual comments by Mr. Dukes. Specifically she contended that he made "smart remarks" to her publicly and in private as well as "talking about me and my family and other personal (sic) issues." Appellant also alleged that on May 27, 2004 Mr. Dukes "ran upon me quickly and told me that 'I was full of it' and that 'I am a trip' on the workroom floor." She contends that he has been hostile, disrespectful and unpleasant to her since he became her supervisor in 1998. On May 25, 2004 appellant alleged that Mr. Dukes allowed everyone in her unit, but appellant "to leave early due to light mail at 8:00 a.m." She also alleged she was called a liar in front of an employee on the workroom floor and she is constantly watched by management. The record contains no witness statements supporting appellant's allegations regarding Mr. Dukes' alleged actions included comments she alleged he made to her on May 27, 2004, that he was hostile, unpleasant and disrespectful or that he let everyone leave early on May 25, 2004 except her. Moreover, the employing establishment submitted statements from Ms. Hughes, Ms. Hailes, Ms. Henry, Mr. Dukes and Ms. North denying appellant's allegations of harassment, threats, verbal abuse retaliation and sexual remarks by Mr. Dukes. Specifically, Ms. Hughes and Ms. Hailes conducted an investigation into appellant's allegations and found no harassment, discrimination or improper sexual remarks by him. The only evidence with regards to the improper sexual comments is a group grievance filed by appellant regarding the use of sexual language by Mr. Dukes. The Board has held that grievances by themselves do not establish that workplace harassment or unfair treatment occurred.[18] There is no other evidence of record supporting appellant's allegations of inappropriate use of sexual language by Mr. Dukes. Furthermore, the employing establishment submitted a copy of an investigative report which found that her allegations were unfounded. Appellant has also not established that Mr. Dukes harassed or discriminated against her or made improper sexual comments. The Board finds she has not established harassment or discrimination by the employing establishment.

Appellant also alleged that the employing establishment abused its authority when the employing establishment improperly denied her leave to attend a funeral, denied her prenatal medical appointments in 1998, her requests for maternity leave required four signatures, denied her request for leave under the FMLA, was told it was unnecessary for her to be with her son during his heart surgery and cancelled her vacation leave. These allegations involve administrative or personnel actions that are not compensable under the Act, absent evidence of error or abuse.[19] The employing establishment denied appellant's allegations and she has not submitted sufficient evidence of error or abuse by the employing establishment in its handling of these administrative matters. The only evidence submitted by her are copies of leave slips denying her request for leave for the period July 17 to October 22, 1999 and a mediation settlement regarding her 1999 pregnancy, a July 22, 1999 FMLA certification and a June 16,

[18] *David C. Lindsey, Jr.,* 56 ECAB ___ (Docket No. 04-1828, issued January 19, 2005). (The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his allegations with probative and reliable evidence. The primary reason for requiring factual evidence from the claimant is support of his 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.)

[19] Michael A. Salvato, 53 ECAB 666 (2002) (the assignment of a work schedule and decisions regarding leave usage are administrative actions that are not compensable absent error or abuse).

1999 employing establishment letter to appellant regarding future leave requests. None of this evidence shows error or abuse by the employing establishment. The mediation settlement dealt with appellant scheduling as many medical appoints on her days off as possible and she agreed "to submit requests for doctor's appointments and to indicate whether leave is to be considered family and medical leave." There is no indication that the employing establishment acted abusively based upon the mediation agreement. The Board finds that appellant has failed to establish error or abuse in the employing establishment's handling of these administrative matters. Therefore, these allegations do not constitute compensable factors of employment.

Lastly appellant alleged that the handling of the current workers' compensation claims by the Office, the dismissal of her bankruptcy case and loss of her "prepaid benefits," her financial difficulties and eviction from her home "caused her a great deal of additional stress and anxiety. The development of any condition related to such matters would not arise in the performance of duty because the processing of this claims bear no relation to appellant's day-to-day or specially assigned work duties and is, therefore, not compensable factors of employment.[20] She has also cited financial stresses, including the dismissal of her bankruptcy claim and the eviction from her home. This, too, bears no relation to appellant's day-to-day or specially assigned work duties and, as thus, would not be a compensable factor of employment.[21]

As appellant has failed to establish any compensable factors of employment, the Board finds that the Office properly denied her claim.[22]

CONCLUSION

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

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[20] *See Matilda R. Wyatt*, 52 ECAB 421 (2001).

[21] *Lillian Cutler*, *supra* note 3.

[22] As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment as the cause of her emotional condition, the medical evidence relating her emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB __ (Docket No. 02-25, issued July 2, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 18, 2005 is affirmed.

Issued: November 16, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board