United States Department of Labor
Employees' Compensation Appeals Board

N.F., Appellant	)	
and	)	**Docket No. 07-187**
	)	**Issued: May 18, 2007**
U.S. POSTAL SERVICE, LORAIN CARRIER ANNEX, Lorain, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 30, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 29, 2006 decision denying her request for an oral hearing as untimely filed and an April 6, 2006 merit decision 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.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied a request for an oral hearing pursuant to 5 U.S.C. § 8124.

FACTUAL HISTORY

On September 27, 2005 appellant, then a 48-year-old bulk mail clerk, filed a traumatic injury claim for compensation alleging abuse, discrimination and threats at work from June 9 to

September 24, 2005 which resulted in multiple physical and mental symptoms. She indicated that the date of injury was June 9, 2005. Appellant stopped work on September 28, 2005.

In an October 13, 2005 letter, the Office advised appellant that the information received was not sufficient to make a determination on her claim. It noted that it appeared that she was claiming an occupational injury for events that had occurred over a period of time or were ongoing, as opposed to something that occurred in a traumatic manner over the course of one single shift. Appellant was requested to provide a detailed explanation of the work factors that she was claiming caused her various conditions.[1]

Appellant submitted statements dated September 27 to November 7, 2005 detailing the events which she alleged supported that management had engaged in a pattern of harassment against her. She alleged that Postmaster Sue Taylor threatened her on June 9, 2005, stating that she had no position. On September 22, 2005 appellant was called into a clerk meeting with Ms. Taylor and Barbara Urazeni, a clerk supervisor, about following orders, express mail and being on time when off-site. However, she was the only clerk called into the office by management. On September 23, 2005 appellant alleged that Ms. Urazeni followed her to an off-site bulk mail position, but did not follow a white male clerk, Joe Lesko. She alleged that management tried to bully her into a verbal assault, using profanity, which would result in her being removed. Appellant contended that numerous white coworkers had used profanity in front of management without consequence. She filed an Equal Employment Opportunity (EEO) claim and a labor charge to get a key and password to the building, while Mascel Jarret only had to request a key.

Appellant alleged a traumatic injury on September 24, 2005 and that she could not work that day. She was not called in for overtime work on September 24, 2005 as Cathy Thomas, her supervisor, lied about not having her telephone number. Appellant alleged that management had other employees change their schedule and come in early to avoid paying her overtime. She stated that overtime was given to a white male under 30 and a female under 40.

On September 24, 2005 Ms. Thomas instructed appellant to leave her bulk mail job and run a machine. Appellant alleged that a supervisor was brought along to witness the instruction. An argument ensued with Ms. Thomas to support her actions and she would not go with appellant to the office. When she asked Ms. Thomas for union time to file a CA-1 claim, Ms. Thomas loudly stated "of course you need union time, of course you do." Appellant stated that Gary Reiter, a coworker, got in her face in a threatening manner and stated that he was not "getting in the middle of your petty-ass bullshit." She contended that Mr. Reiter had used profanity and that she would file a grievance. When appellant again asked Ms. Thomas for union time to file a claim, Ms. Thomas threatened her position, stating that appellant was making her life miserable and walked away with her hands over her ears. She also alleged that Mr. Reiter got a verbal warning for swearing at her, while she got fired for swearing in front of Ms. Thomas.

[1] The Office noted that, since appellant had a prior claim for a stress-related condition under File No. 092052260, this claim would pertain only to events and/or work factors that occurred on or after September 24, 2004 or the date that she returned to work from her previous condition, whichever was later.

On September 28, 2005 appellant submitted a CA-1 form to Ms. Taylor. She alleged that management improperly paged Union Steward Jon McFarland to look at the CA-1 form, which she asserted was a private document. Appellant had training scheduled for September 28, 2005 and when she was leaving to go to training Ms. Thomas told her that she had the wrong claim form. She stated that a disagreement ensued as to the correct form to file. Appellant alleged that Ms. Thomas yelled at her and pointed to the door stating "just go, just get out and go." She stated that this occurred in front of Ms. Taylor, who did nothing. Appellant contended that it was "impossible" to work or to attend training because she was "yelled at" with profanity. She alleged that Ms. Taylor had lied about a document sent by a Mr. McFarland about a grievance she filed. Appellant asserted that management engaged in racist abusive behavior. She alleged that management had improperly refused documents for Family Medical Leave Act (FMLA) approval; were not compliant with advanced sick leave authorization and refused to provide her continuation of pay.

Appellant alleged that she received a threatening letter from Ms. Urazeni dated September 30, 2005. The letter noted that appellant was to submit medical documentation for absences over three days and in the case of a prolonged illness to renew her application for sick leave every 30 days. It stated that "employees returning to duty from an absence due to illness of twenty-one (21) calendar days or more or any absences in which they have been hospitalized … regardless of the length of absence, are required to report to the Postal Service Medical Unit before reporting to duty to obtain clearance by presenting a statement from their physician." Appellant alleged that the requirement to report to the medical unit before reporting to work was illegal. She submitted an article from the American Postal Worker, which indicated that the U.S. Court of Appeals for the Seventh Circuit ruled that management did not have the right to require "fitness-for-duty examinations" before workers on extended FMLA leave could return to the job.

Appellant submitted leave request forms, including requests and correspondence pertaining to continuation of pay, leave under the FMLA, advanced sick leave, complaints about shared services and her EEO claims. In a June 9, 2005 statement, Christine Guler, a coworker, indicated that "on Thursday, [Ms.] Taylor stated to [appellant] to worry about her own job and not hers."

Dr. Thomas J. Haglund, Ph.D., a clinical psychologist, submitted disability slips dated October 12 and 13, July 15, November 14 and 28, 2005. On November 28, 2005 he advised that appellant had anxiety and depression stemming from what she saw as a hostile work environment. In a July 15, 2005 medical report, Dr. Enrique Huerta, a Board-certified psychiatrist, diagnosed a general anxiety disorder.

In a November 1, 2005 statement, Ms. Thomas addressed the events of September 24, 2005. She had instructed appellant to work the letter sorting machine and appellant yelled at her, questioning where the other clerks were and that she should have been called in early for overtime. Appellant called Ms. Thomas a liar when she said she only had the telephone number of appellant's mother. Although she wanted to go into the office, Ms. Thomas told her to work on the machine. Ms. Thomas stated that appellant followed her and yelled that she needed union time to file a grievance. She responded that she did not expect anything less from appellant. Ms. Thomas also told appellant that she did not need any more lip from her and wanted appellant to work on the sorting machine "now." Appellant commented very loudly on

the workroom floor that Ms. Thomas did not know how to make a schedule. Ms. Thomas called union official Mary Ann Janda to calm appellant down so that she would not have to leave the office. When appellant told her that she needed a CA-1 form and union time, Ms. Thomas told appellant that she had already arranged for her union time. Ms. Janda noted that appellant had stated that she wanted to file a grievance against Mr. Reiter for swearing at her while on the workroom floor. An argument arose between appellant and Ms. Janda, who denied threatening her, yelling or discriminating against her. Ms. Janda indicated that she had simply issued instructions and that appellant did not take instruction well or like to work on the sorting machines.

In an October 25, 2005 statement, Ms. Taylor stated that on June 9, 2005 appellant was talking with Supervisor Jon Klassen about the attire of another employee and she approached them asking what the problem was. Ms. Taylor noted that all employees in the clerk craft were made aware of the dress code. She indicated that those employees who were not in proper uniform were put on notice and no one was sent home. Ms. Taylor advised that she never threatened appellant, but that appellant had threatened her by stating that she had better worry about her job. She reported witnessing a confrontation between Ms. Thomas and appellant on September 28, 2005 in which both raised their voices and appellant called her supervisor a liar. Ms. Thomas told appellant that she had made a mistake and to go to her training class. She denied any knowledge of anyone screaming or yelling profanities at appellant during her eight years as postmaster. Ms. Thomas denied any discrimination or abuse of appellant.

By decision dated April 6, 2006, the Office denied the claim finding that appellant failed to establish a compensable factor of employment. The Office adjudicated the matter as an occupational disease claim as appellant's allegations pertained to incidents or more than one work shift. Therefore, appellant was not eligible for continuation of pay.

On September 6, 2006 appellant requested an oral hearing before an Office hearing representative. She included copies of a June 3, 2004 letter, contending that no decision had been issued in her case within 180 days and copies of August 30 and 31, 2006 electronic mailings, alleging that she never received copies of the April 10, 2006 decision.

By decision dated September 29, 2006, the Office denied appellant's request for an oral hearing. It found that her request was untimely. The Office exercised its discretion and denied appellant's request for the further reason that her claim could equally well be addressed by submitting relevant evidence and requesting reconsideration.

LEGAL PRECEDENT -- ISSUE 1

To establish that she sustained an emotional condition in the performance of duty, a claimant 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 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 her regular of specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.[3] 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.[4]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[5] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[6] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[7]

Generally, 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.[8] An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.[9] An employee's frustration from not being permitted to work in a particular environment or to hold a

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

[4] *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[5] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[6] *See Charles D. Edwards*, 55 ECAB 258 (2000).

[7] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991); and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

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

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

particular position is not compensable.[10] Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[11]

For harassment or discrimination to give rise to a compensable disability, there must be evidence 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.[12]

ANALYSIS -- ISSUE 1

The Board notes that the Office properly adjudicated appellant's claim as an occupational illness. Appellant alleged multiple events that occurred over a period of more than one shift. Thus, her claim is that of an occupational illness.[13] Therefore, she would not be eligible for continuation of pay. Section 8118(a) authorizes continuation of pay only for an employee who has filed a valid claim for a traumatic injury.[14]

Appellant attributed her emotional condition to actions of her supervisors on June 9, September 22, 23, 24 and 28, 2005. As noted, workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.[15] The Board has held that the manner in which a supervisor exercises his or her discretion generally falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[16] Appellant did not submit sufficient evidence to establish that Ms. Taylor, Ms. Urazeni or Ms. Thomas committed error or abuse with regard to the administrative matters alleged.

Appellant alleged that Ms. Taylor "threatened" her position on June 9, 2005. Ms. Guler's June 9, 2005 statement supports that Ms. Taylor told appellant to worry about her own job not hers. This statement is insufficient to support appellant's allegation that her position was threatened. Ms. Taylor denied that she ever threatened appellant's position. The evidence of record does not establish a threat by the postmaster on that date, as alleged.

Regarding the events of September 24, 2005, appellant submitted no evidence to establish a factual basis for her claim. The record reflects that appellant became upset about not being

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

[11] *Id.*

[12] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

[13] *See* 20 C.F.R. § 10.5(ee) (traumatic injury defined); 20 C.F.R. § 10.5(q) (occupational disease defined).

[14] 5 U.S.C. § 8118(a).

[15] *See Charles D. Edwards, supra* note 6.

[16] *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

called in for overtime work and called Ms. Thomas a liar when she said she did not have appellant's telephone number. Ms. Taylor stated that Ms. Thomas told appellant that she had made a mistake. There is no evidence to support appellant's claim that the employing establishment discriminated against her or took actions to avoid paying her overtime. Appellant has not established this allegation as a compensable factor.

On September 24, 2005 Ms. Thomas instructed appellant to work the letter sorting machine. However, appellant yelled at her, trying to get Ms. Thomas to justify her actions. There is no evidence to support appellant's allegation that management sought to bait her into an argument. Although appellant may have disagreed with the manner in which Ms. Thomas made schedules or issued instructions to work on the letter sorting machine, there is no evidence or any error or abuse in this administrative matter. There is also no evidence to support appellant's assertion that she was not relieved while working on the letter sorting machine. The record reflects that appellant was granted union time in which to file a claim. Appellant asserted that she was also going to file a grievance against Mr. Reiter, a coworker. On September 28, 2005 she got into an argument with Ms. Thomas, during which both parties raised their voices and appellant called her supervisor a liar. Ms. Thomas told appellant to go to her training class. Although appellant indicated that she had filed a grievance and EEO complaints pertaining to management and Mr. Reiter, there is no finding or final decision of record regarding these matters. The filing of a grievance or an equal employment opportunity complaint is not sufficient by itself to establish error or abuse.[17]

Appellant also alleged a general pattern of harassment, verbal abuse and discrimination. These events include her allegations that Ms. Urazeni followed her to an off-site position on September 23, 2005, but did not follow a white male clerk, management tried to bully her into a verbal assault using profanity so that she could be removed; management acted in a discriminatory manner; and that she had to file an EEO and labor charge to get a key and password to the building. Appellant, however, submitted no evidence to support that these events occurred, as alleged. As previously noted, mere perceptions of harassment or discrimination are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for her allegations with probative and reliable evidence.[18] The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[19] Appellant did not submit sufficient evidence establishing a factual basis for her allegations of harassment or verbal abuse at the employing establishment. She did not establish that harassment or discrimination occurred. The evidence suggests that her feelings were self-generated and thus, not compensable under the Act.[20]

[17] *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

[18] *James E. Norris, supra* note 9.

[19] *Joe M. Hagewood*, 56 ECAB ___ (Docket No. 04-1290, issued April 26, 2005) (the mere fact a supervisor or employee may raise his voice during the course of a conversation does not warrant a finding of verbal abuse).

[20] *See Gregorio E. Conde*, 52 ECAB 410 (2001).

While appellant alleged that she was the only clerk to attend a "clerk meeting" on September 22, 2005, there is no evidence in the record to substantiate that this event occurred as alleged. Ms. Taylor indicated that appellant complained about the dress code on June 9, 2005 and management informed all employees as to the dress code. The Board finds that the employing establishment's action of meeting with employees in the clerk craft to discuss the dress code was reasonable. Additionally, Ms. Taylor indicated that no one was sent home for not being in proper uniform. Although appellant alleged that she was being harassed by management by being spoken to individually, she has submitted no evidence that the employing establishment committed error or abuse in this regard.

Appellant alleged that management was noncompliant in processing her claim forms, authorizing advanced sick leave, and in not signing FMLA documents. However, there is nothing in the evidence to support that these events occurred, as alleged. Although management requested medical and FMLA documentation prior to appellant's return to work, she did not submit evidence showing how the employing establishment acted improperly toward her in this matter. As noted above, management's method of carrying out supervisory duties falls outside the coverage of the Act absent a finding of error or abuse.[21] Appellant did not submit sufficient evidence to substantiate her allegation that managements repeated requests for medical information from her were erroneous or abusive. Thus, she did not establish any compensable factors of employment with regard to these matters.

The Board finds that appellant has not established any compensable employment factors under the Act. Therefore, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[22]

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[23]

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a

[21] *Linda J. Edwards-Delgado, supra* note 16. *See David C. Lindsey, Jr.*, 56 ECAB ___ (Docket No. 04-1828, issued January 19, 2005) (generally, actions of the employing establishment in matters involving the use of leave are not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee).

[22] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Roger Williams*, 52 ECAB 468, 474 (2001); *Margaret S. Krzycki*, *supra* note 5.

[23] 5 U.S.C. § 8124(b)(1).

hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.[24]

ANALYSIS -- ISSUE 2

Appellant's request for an oral hearing was dated September 6, 2006, more than 30 days after the April 6, 2006 decision. Therefore, appellant is not entitled to an examination of the written record as a matter of right. The Office properly exercised its discretion in denying an oral hearing upon appellant's untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting additional evidence to the Office.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[25] While appellant argues that she had no notice of the Office's decision, there is no evidence in the case record to establish that the Office abused its discretion in refusing to grant appellant's hearing request.

[24] *Claudio Vazquez*, 52 ECAB 496 (2001); *Henry Moreno*, 39 ECAB 475 (1988).

[25] *Daniel J. Perea*, 42 ECAB 214 (1990).

CONCLUSION

Appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty. The Board further finds that the Office properly denied her request for an oral hearing before an Office hearing representative under 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the September 29 and April 6, 2006 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Issued: May 18, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board