United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 08-1655**
	)	**Issued: April 2, 2009**
U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, Employer	)	

Appearances:
Sally F. LaMacchia, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 23, 2008 appellant, through her attorney, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated April 30, 2008 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.

ISSUE

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

This case has previously been before the Board for a review of a nonmerit decision.[1] On December 29, 1998 appellant, then a 39-year-old clerk, filed an occupational disease claim

[1] Docket No. 03-1387 (issued March 8, 2004).

alleging that she sustained anxiety due to harassment and discrimination by her supervisor, the denial of leave, receiving a letter of warning and working as a window clerk.

In a statement accompanying her emotional condition claim, appellant asserted, "The job I had occasionally required me to work the window. I had not done that kind of work in three years. That job is very stressful. I never considered myself very good at it. It was so stressful I did not enjoy doing it." She related that in the spring of 1997 her supervisor told her that she had to work the window. Appellant stated:

> "I told my supervisor I wanted to go back to training before I was to work the window and face the general public. I would feel more comfortable and less stress if I could retrain in a classroom not in public view with customers staring at me while I made extremely stupid mistakes out of inexperience. They had also changed a few very important pieces of equipment. They changed buttons on the computers we use and added credit card machines. I had no idea how to use these things. My supervisor said I did not need retraining and she was not sending me. After a year of not working the window, the [employing establishment] is required to send a clerk to retraining.
>
> "I worked the window without retraining. This was extremely difficult. It was so embarrassing when I could not remember what to do. I was constantly bothering the clerk next to me for instructions therefore interrupting them and their customer. Usually the first two hours working the window I was so stressed it made work like I said, extremely difficult."

Appellant also attributed her condition to her supervisor, Christina Williams, giving her a letter of warning, telling her that she was unable to find her at her workstation and failing to grant her request for time off when she injured her back.

In a report dated January 20, 1999, Dr. Heywood W. Zeidman, a Board-certified psychiatrist, diagnosed a possible panic disorder with agoraphobia and possible major depressive disorder "exacerbated by the pressures and stresses of work."

In a statement received March 1, 1999, Ms. Williams related that appellant was "slow in closing out her reports but otherwise did a satisfactory job" on the window. She attempted to use her leave during the holidays when the employing establishment was very busy. Ms. Williams indicated that on March 22, 1999 appellant received a letter of warning for leaving the building without notifying any supervisors or managers. On April 14, 1999 she stated:

> "[Appellant] preferred to work the early hours and dreaded working the window which required her to handle money and interact with customers. From 1995 to 1996 I honored her request until we were so short staffed that other employees started to complain that [she] was [not] working her bid assignment. I scheduled [appellant] for window service and she complained that she could not work the position. I called our training department to inquire about a refresher training and was told that she had not been away from the position long enough to qualify for

retraining. [Appellant] had always worked the window in past years and she had a window credit."

In a statement dated April 3, 1999, appellant related that she did not work the window in either 1995 or 1996. When she returned to working the window after three years significant changes had occurred that warranted retraining.

By decision dated June 7, 1999, the Office denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. It found that she did not establish any compensable employment factors. Appellant requested an oral hearing, which was held on December 7, 1999.

By decision dated July 11, 2000, the Office hearing representative affirmed the June 7, 1999 decision. The hearing representative determined that appellant had not been absent from working the window long enough to require retraining.

On January 31, 2001 appellant requested reconsideration. She contended that she was entitled to mandatory retraining because she did not work the window for three years and noted that there were rate changes and significant changes in service. Appellant attached a bargaining agreement advising that employees absent from positions for 541 days to three years should have retraining if significant changes occurred and that employees absent from positions for three to five years required retraining.

On March 9, 2001 the Office requested that the employing establishment provide the time that appellant was away from the window. On March 26, 2001 Norman Klein advised that appellant did not work the window for 15 months from March 1996 through June 1997. He asserted that there were no significant changes such that she required retraining. In a response received March 30, 2001, Ms. Williams related that appellant was not off window work for three years. She maintained that employees did not require retraining for rate changes. Ms. Williams advised that the introduction of a money wire service to Mexico constituted a significant change but appellant did not have to perform that transaction.

In a report dated January 23, 2001, Dr. Flora Danque, Board-certified in family practice, diagnosed panic disorder with agoraphobia, major depressive disorder and obsessive compulsive disorder. She related, "The abuse, misuse, disparate treatment and maltreatment of [appellant] of and by her supervisor, as well as the error and failure to retrain her not only caused these disorders but also would exacerbate her medical problems and condition should she return to her job at the [employing establishment]."

In a statement dated April 10, 2001, appellant related that she lost her stamp stock in April 1994. She was reissued stamp stock on July 12, 1995 but did not use it until October 1, 1997. Appellant asserted that she was away from the window for three years and three months. She noted that she worked on the same machine but that the functions were updated.

By decision dated May 8, 2001, the Office denied modification of its prior decision. On August 27, 2001 appellant requested reconsideration. By decision dated October 12, 2001, the Office denied modification of its May 8, 2001 decision. Appellant requested reconsideration on

February 15, 2002. She submitted clock rings dated April 1, 1994 through June 6, 1998. In a decision dated May 17, 2002, the Office denied her request on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant review of the prior merit decision.

On March 8, 2004 the Board set aside the May 17, 2002 decision and remanded the case for further consideration of the merits.[2] By decision dated August 24, 2004, the Office found that appellant had not established an emotional condition. It determined that she had not shown that the window clerk position significantly changed such that she required retraining. The Office further noted that appellant did not establish that she was away from the position for three years.

On September 1, 2004 appellant, through her attorney, requested an oral hearing. At the July 29, 2005 hearing, counsel specified that the main issue was whether the employing establishment should have retrained her prior to returning her to the window. Appellant related that she worked a variety of positions, mostly in the back, as vacation relief. She had not worked at the window for over three weeks since 1987. Appellant received training on the window in 1987. From 1987 to 1994 she worked at the window for two hours on Saturday. In 1994 the employing establishment took away her window stock. From 1995 to 1998 appellant worked as vacation relief and received her window stock back. She worked approximately 90 percent of the time in the back and 10 percent of the time in the front. Appellant worked at the window in 1998 but was uncomfortable because she had insufficient training and the computer equipment had changed. She kept hitting the wrong buttons on the computer and money order machine. A different supervisor advised appellant to perform different tasks simultaneously. The union representative testified that the location where appellant worked was very busy with long lines for window clerks.

On July 22, 2005 Ms. Williams asserted that, as demonstrated by the clock rings, appellant was not off window work for three years. She confirmed that she received instructions from different supervisors but noted that her orders took precedent since she was in charge. Ms. Williams acknowledged that customer service could be stressful but noted that appellant could have changed her bid job.[3]

In a decision dated September 26, 2005, a hearing representative affirmed the August 24, 2004 decision. Appellant appealed to the Board. By order dated September 18, 2007, the Board noted that it had not received the case record from the Office and remanded the case for reconstruction of the case record and an appropriate decision.[4]

By decision dated April 30, 2008, the Office found that appellant had not established an emotional condition in the performance of duty.

[2] Docket No. 03-1387 (issued March 8, 2004).

[3] In a sworn affidavit dated July 26, 2005, Thomas E. Donohue, a union representative, related that he had reviewed appellant's clock rings and "observed that some of these clock rings had adjustments made to them. This is typically done each day by the employee's supervisor. It appears the supervisor made adjustments to [her] clock rings during this period."

[4] Order Remanding Case, Docket No. 06-870 (issued September 18, 2007).

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 her 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.[5] 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.[6]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[7] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[8] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[9]

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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[10] A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[11] The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[12] 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

[5] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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

[7] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[8] *See William H. Fortner*, 49 ECAB 324 (1998).

[9] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[10] *See Michael Ewanichak*, 48 ECAB 364 (1997).

[11] *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

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

of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[13]

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 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.[14] 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.[15]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant asserted that her supervisor, Ms. Williams, harassed and discriminated against her by failing to grant her requests for time off, looking for her when she was not at her workstation and giving her a letter of warning. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.[16] A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.[17] Appellant did not submit any factual evidence in support of her allegations and thus has not established a compensable work factor.

With regard to appellant's allegations that management erroneously denied her leave requests, gave her conflicting work instructions and disciplined her unfairly, 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 coverage of the Act absent evidence showing error or abuse on the part of the employing establishment.[18] Although generally related

[13] *Beverly R. Jones*, 55 ECAB 411 (2004).

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

[15] *Id.*

[16] *Doretha M. Belnavis*, 57 ECAB 311 (2006).

[17] *Robert Breeden*, 57 ECAB 622 (2006).

[18] *Jeral R. Gray*, 57 ECAB 611 (2006) (the assignment of work, the handling of leave requests and disciplinary actions are administrative functions of a supervisor and not compensable absent a showing of error or abuse on the part of the employing establishment).

to the employment, they are administrative functions of the employer and not duties of the employee.[19] Ms. Williams explained that she denied appellant's requests for unscheduled annual leave due to the workload at the employing establishment and that appellant received a letter of warning for leaving the building without notifying management. She noted that her work assignments for appellant took precedence over the requests of other supervisor due to her position. Appellant has not submitted any evidence that the employing establishment erred in matters involving leave, the assignment of work or disciplinary actions and thus has not established a compensable employment factor.

Appellant argued that she did not receive proper training when she worked the window in 1998. Training is a personnel matter and is not compensable absent error or abuse.[20] Appellant submitted a bargaining agreement showing that the employing establishment must provide retraining for employees absent from working in a position over three years or when an employee is absent from the position between 541 days and three years and a significant change occurred. Ms. Williams asserted that appellant was not absent from the window for over three years. She indicated that the money transfer to Mexico constituted the only significant change and that appellant did not have to perform that duty. At the July 29, 2005 hearing, appellant related that she worked the window on Saturdays from 1987 to 1994 and worked in the front 10 percent of the time from 1995 to 1998. She testified that she was not absent from the window for over three years or that a significant change pertinent to her occurred which would warrant retraining. Thus, appellant has not established a compensable work factor.

Appellant further alleged that she experienced stress performing her duties as a window clerk. The Board has held that emotional reactions to situations in which an employee is trying to meet her or her position requirements are compensable.[21] Appellant asserted that she experienced difficulty working the machines at the window and had to constantly ask a coworker for assistance. Where a claimed disability results from an employee's emotional reaction to her regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Act.[22] Therefore, appellant has established as a compensable employment factor that she experienced stress performing the duties of a window clerk.

Appellant's burden of proof, however, is not discharged by establishing a compensable factor of employment. She must also submit rationalized medical opinion evidence establishing that her emotional condition is causally related to the accepted employment factor.[23] In a report dated January 20, 1999, Dr. Zeidman diagnosed a possible panic disorder, agoraphobia and major depressive disorder "exacerbated by the pressures and stresses of work." He did not provide any rationale in support of the diagnoses or specifically discuss the compensable

[19] *Id*.

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

[21] *Trudy A. Scott*, 52 ECAB 309 (2001).

[22] *Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[23] *Charles D. Gregory*, 57 ECAB 322 (2006).

employment factor of working at the window. Consequently, Dr. Zeidman's opinion is of diminished probative value.[24]

On January 23, 2001 Dr. Danque diagnosed obsessive compulsive disorder, panic disorder with agoraphobia and major depressive disorder. She attributed the diagnosed conditions to mistreatment of appellant by her supervisor and the failure to retrain her. Dr. Danque did not relate the diagnosed conditions to the identified compensable employment factor. Her report is insufficient to meet appellant's burden of proof.[25]

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2008 is affirmed as modified to find that appellant has established a compensable employment factor.

Issued: April 2, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[24] *Beverly R Jones*, *supra* note 13.

[25] *Id*.