

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YOLANDA C. BURROWS and U.S. POSTAL SERVICE,  
POST OFFICE, Farmington Hills, MI

*Docket No. 99-2126; Submitted on the Record;  
Issued December 4, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim.

On February 13, 1997 appellant, then a 31-year-old letter carrier, filed a claim for on-the-job stress that she attributed to harassment by her supervisor. Submitted with her claim form was a statement describing specific incidents and conditions to which appellant attributed her emotional condition, and medical reports indicating that appellant's adjustment disorder with anxiety was related to her employment. By letter dated May 5, 1997, the Office advised appellant that it needed substantiation of her allegations and medical evidence supporting that she had an emotional condition related to factors of her employment. Appellant submitted a May 21, 1997 statement reiterating and expanding on her prior allegations.

By decision dated June 6, 1997, the Office found that appellant had not established that she sustained an injury in the performance of duty. Appellant requested a hearing, which was held on April 1, 1998 and submitted additional evidence. By decision dated June 1, 1998, an Office hearing representative found that appellant had not established any incidents in the performance of duty. By undated letter received by the Office on September 29, 1998, appellant requested reconsideration and submitted copies of settlements in her Equal Employment Opportunity complaints (EEO). By decision dated November 23, 1998, the Office found that the additional evidence did not warrant modification of its prior decisions. By letter dated March 29, 1999, appellant requested reconsideration. By decision dated June 11, 1999, the Office found that appellant's request was not sufficient to warrant review of its prior decisions.

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

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 his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>1</sup>

Many of appellant's allegations relate to administrative or personnel functions of the employing establishment. These include the denial of appellant's request for a transfer,<sup>2</sup> monitoring of appellant's job performance,<sup>3</sup> denial of leave,<sup>4</sup> the assignment of her work schedule,<sup>5</sup> telephone messages not being relayed to appellant in the field, retraining,<sup>6</sup> and counseling appellant received about her work performance, attendance and attire.<sup>7</sup> Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.<sup>8</sup> Appellant has alleged, but not established, error or abuse in all of the matters listed above. She has established error in one personnel matter: In an EEO settlement agreement dated September 17, 1998, the employing establishment acknowledged that it erred in returning an application for a promotion to appellant and in not submitting this application in a timely manner.

Appellant also has not shown error or abuse in the employing establishment's charges of absence without leave for January 28 and 29, 1997. Even though these charges were removed in a grievance settlement, the mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.<sup>9</sup> The same is true of disciplinary actions, including letters of warning issued to appellant on December 21, 1995 and October 8, 1996 for bringing mail back to the station and not telling her supervisor. That the December 21, 1995 letter of warning was expunged pursuant to a grievance settlement and that a seven-day suspension for a vehicle accident on February 10, 1997 was removed from her official personnel folder pursuant

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Donna J. DiBernardo*, 47 ECAB 700 (1996).

<sup>3</sup> *Jimmy Gilbreath*, 44 ECAB 555 (1993).

<sup>4</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>5</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>6</sup> *See Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>7</sup> *Kathi A. Scarnato*, 43 ECAB 335 (1991).

<sup>8</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>9</sup> *Id.*

to an EEO settlement does not show that these personnel actions by the employing establishment were erroneous.

Appellant has also attributed her emotional condition to harassment by her supervisor, which, she alleged, continued after she was assigned to another supervisor. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. 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 alone of harassment or discrimination are not compensable under the Act.<sup>10</sup>

Appellant has not substantiated that any of the specific incidents of harassment cited in her statements and at a hearing before an Office hearing representative did in fact occur. There is no evidence substantiating that supervisors or managers yelled at or taunted her, that inappropriate remarks were made about her work habits, or that a supervisor expressed joy when she found out that appellant was not assigned to her unit. Appellant also has not established that her former supervisor attempted to follow her on February 10, 1997, causing appellant to have a vehicle accident later that day.

Appellant has also not submitted any substantiation of her allegations that she was overburdened with work or given more work than other employees.<sup>11</sup> She has not substantiated that she was sent on a route without a map and the employing establishment stated that maps were available for all routes for all employees. Appellant's allegations that her supervisor stole money that was collected from employees to help appellant during an absence from work is not only unsubstantiated and denied by the supervisor, but is not related closely enough to matters of employment to afford coverage under the Act.

As appellant has alleged and substantiated one compensable employment factor -- the error in submitting an application for a promotion -- the Board will analyze the medical evidence to determine whether it establishes that this factor contributed to appellant's emotional condition.

In a report dated March 15, 1997, appellant's treating psychiatrist, Dr. Shuja Haque, attributed appellant's adjustment disorder to stress on the job and to harassment by her supervisor, specifically the supervisor following her causing appellant to crash her postal vehicle. Stress on the job is too general and the Board has found that appellant has not substantiated that the February 10, 1997 incident of a former supervisor following appellant occurred as alleged. In a report dated June 12, 1997, Dr. Haque attributed appellant's emotional condition to her supervisor mishandling appellant's money and accusing her family of stealing it. These incidents also are not established as factual nor compensable. To establish entitlement to compensation, the medical opinion evidence must establish that an employee has an emotional condition that is causally related to those employment factors found as compensable and

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<sup>10</sup> *Donna Faye Cardwell*, *supra* note 4.

<sup>11</sup> Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence. *Joel Parker, Sr.*, 43 ECAB 220 (1991).

supported by the evidence of record.<sup>12</sup> Appellant has not submitted medical evidence relating her emotional condition to the one potentially compensable factor cited in this decision of the Board and has not met her burden of proof.

The Board further finds that the Office, by its June 11, 1999 decision, properly refused to reopen appellant's case for further review of the merits of her claim.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- 1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Appellant's March 29, 1999 request for reconsideration was not accompanied by any new evidence and did not contain any argument on points of law or fact. The Office properly refused to reopen appellant's case for further review of the merits of her claim.

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<sup>12</sup> *James W. Griffin*, 45 ECAB 774 (1994).

The decisions of the Office of Workers' Compensation Programs dated June 11, 1999, November 23 and June 15, 1998 are affirmed.

Dated, Washington, DC  
December 4, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member