U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TINA M. JAMES and U.S. POSTAL SERVICE,
ANN ARBOR MAIN POST OFFICE, Ann Arbor, Mich.

Docket No. 96-2462; Submitted on the Record;
Issued August 26, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

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

On April 28, 1994 appellant, then a 30-year-old letter carrier, filed a claim for stress, panic disorder, anxiety and hypertension which she related to continued stress at work, particularly when her documentation for a physician's visit was denied. In an August 26, 1994 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to demonstrate that her claimed emotional condition arose out of the course of employment. In an October 2, 1995 decision, an Office hearing representative affirmed the Office's August 26, 1994 decision. In a July 22, 1996 decision, the Office denied appellant's request for modification of the Office's prior decisions.

The Board finds that the case is not in posture for decision.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the 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 her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal

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

injury sustained in the performance of duty within the meaning of the Act.[2] In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

Appellant made a general allegation that her emotional condition was due to harassment by her supervisors at work. The actions of a supervisor which an employee charaterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[4] The Office reviews the incidents alleged as constituting harassment to determine whether appellant's disabling emotional condition was precipitated or aggravated by factors of her employment.[5]

Appellant cited many incidents relating to leave requests in regard to her emotional condition. She stated that the postmaster at the employing establishment attempted to tell her that she could not have her wedding day off from work. She indicated that on another occasion her request for sick leave was denied as was that of a coworker. Both of them were instructed by their respective physicians to take two days off. Appellant stated that the male coworker's sick leave was approved but her leave was denied and she was listed as absent without leave for those two days. She also stated that for the period of February 16 through February 22, 1993 her leave request for surgery was approved but was subsequently reported on an absence analysis as unapproved sick leave and leave without pay. She stated that some leave requests submitted in her name were forged. She stated that on one occasion her sick leave application was disapproved because her supervisor thought it should not have taken her eight hours to see her doctor. She indicated that her supervisor refused to sign an early work slip for her but routinely approved such slips for a coworker even though she at times came in when she was scheduled. She also stated that on one occasion she was not allowed to leave on her break to return money to a gas station across the street from the employing establishment while a coworker was allowed to go to the bank. Appellant received several letters of warning on requesting leave properly with medical documentation and a letter of suspension on the same matter. Appellant indicated that she filed grievances concerning the letters of warning and the suspension. The letters and the suspensions were dropped as a settlement of the grievance. In general, matters relating to leave, including letters of warning and other disciplinary actions, are administrative in

[2] *Artice Dotson,* 41 ECAB 754 (1990); *Allen C. Godfrey,* 37 ECAB 334 (1986); *Buck Green,* 37 ECAB 374 (1985); *Peter Sammarco,* 35 ECAB 631 (1984); *Dario G. Gonzalez,* 33 ECAB 119 (1982); *Raymond S. Cordova,* 32 ECAB 1005 (1981); *John Robert Wilson,* 30 ECAB 384 (1979).

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

[4] *Joan Juanita Greene,* 41 ECAB 760 (1990).

[5] *Dolores F. Ximinez,* 29 ECAB 929 (1978).

nature and therefore do not arise within the performance of appellant's assigned duties.[6] However, appellant has claimed that there was error and abuse by the employing establishment in the manner in which it treated her leave requests, in disparate treatment in denying leave requests and errors or abuse in the recording of her leave or in the submission of forged requests for leave. While some of appellant's claims relating to leave and disciplinary action are not compensable factors of employment, some of appellant's allegations must be investigated further to determine whether error or abuse occurred as appellant alleged.

Appellant reported that on one occasion, she left her car keys in the break room but the keys were gone when she came to look for them. Her car was then stolen and found by police after it had been burned. She indicated that she suspected a coworker took the car and burned it, relating that the police reported to her that nothing was stolen out of the car such as the tires or the stereo system. However, appellant has not submitted any evidence to prove this allegation. Therefore, in the absence of such evidence, this incident must be considered not to have occurred within the performance of appellant's duties. She also stated that when she called into work the day after her car was stolen to request leave because she did not have any transportation, the supervisor indicated that she would be listed as absent without leave because she had the responsibility to get to work. This incident would also not be considered a compensable factor of employment because it involves a matter relating to leave, an administrative matter, and there is no evidence that the action taken by the Office was in error or abuse.

Appellant indicated that her April 28, 1994 claim for compensation was deliberately posted in the employing establishment for public viewing by a coworker who occasionally worked as a temporary supervisor. The employing establishment admitted that appellant's claim form was posted on a computer at work. In a July 29, 1994 letter, an official at the employing establishment admitted that appellant's claim form was posted on a computer and was seen by coworkers. The employing establishment related that the temporary supervisor had the claim form on his desk but was distracted and then found that appellant's claim form was posted. Even if the supervisor did not act abusively in posting appellant's claim form, the employing establishment admitted that the claim form was posted on a computer. This is error in an administrative action and therefore is a compensable factor of employment.

Appellant contended that she was followed on her mail route by her supervisor. She also alleged that she was deliberately assigned a vehicle with a faulty lock and was then reported for leaving her vehicle unsecured when she was on a lunch break. Appellant has not established that the supervisor's monitoring of her on her route was in error or abusive or that she was deliberately assigned a faulty vehicle in an effort to subsequently subject her to disciplinary action. The former matter is an administrative action by the supervisor and is not a compensable factor of employment. The latter matter is an unproved allegation and therefore cannot be accepted as occurring as alleged.

Appellant claimed that she was verbally abused on occasion. She stated that one coworker, in front of others, accused her of being lazy as a way of getting others to laugh. She indicated that when she once told a supervisor that she was stressed out, the supervisor told her

[6] *Ralph O. Webster*, 38 ECAB 521 (1987).

to commit suicide. The supervisor subsequently apologized but told appellant that management could do whatever it wanted to appellant and guaranteed to her that, despite all the grievances she might file, nothing would ever happen to the managers. Verbal abuse, if it is established to have occurred, is a compensable factor of employment.[7]

As discussed above, appellant has discussed many incidents of employment, some of which cannot be considered compensable factors of employment, such as disciplinary actions and some denials of leave and others which have not been proven to have occurred as alleged, such as the theft of her car which appellant alleged was done by a coworker, or the claim that she was set up by assignment of a defective vehicle so that she could later be accused of leaving the vehicle unsecured. However, appellant has clearly set forth one compensable factor, the posting of her claim form at the employing establishment. She also has described incidents of disparate treatment or abuse in the granting or denial of leave and incidents of verbal harassment. While the employing establishment, in its July 29, 1994 letter, responded to some of appellant's allegations, it did not address other of appellant's allegations relating to erroneous or abusive treatment verbally and regarding leave. Under its procedures, the Office, when necessary to clarify ambiguous factual matters, must request further statements from the employing establishment, including statements from supervisors and possible witnesses to the incidents to determine whether the incidents occurred as alleged so as to determine whether the incidents constituted compensable factors of employment.[8] The case must therefore be remanded so that the Office may obtain the necessary information as required by its procedures. The Office should then prepare a statement of accepted facts, describing in detail the factors accepted as compensable factors of employment, the factors found to be not within appellant's performance of duty and the incidents not found to have occurred as alleged. The Office should then refer appellant, together with the statement of accepted facts and the case record, to an appropriate physician for an opinion on whether she has an emotional condition or any other condition that is causally related to compensable factors of her employment. After such further development as it may find necessary, the Office should issue a *de novo* decision.

[7] *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.12(c) (March 1994).

The decisions of the Office of Workers' Compensation Programs, dated July 22, 1996 and October 2, 1995, are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
August 26, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member