

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE L. RASCOE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Norfolk, Va.

*Docket No. 96-214; Submitted on the Record;
Issued January 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On April 14, 1995 appellant, then a 33-year-old mail processor, filed a claim alleging that she sustained an emotional condition which she attributed to: being terminated from her position at the employing establishment in January 1987 for failing to qualify on an assignment scheme¹; filing an Equal Employment Opportunity (EEO) complaint because she felt lunch breaks were not being rotated fairly among the employees; not being given a position for which she had applied; being discriminated against and harassed based on race, sex, her EEO complaints, and her use of leave; being required to attend a workshop for accident repeaters, having her work schedule changed, and not having her work restrictions honored by the employing establishment.

In a work restriction evaluation dated March 17, 1994, a physician whose signature is illegible recommended certain work restrictions for appellant which included being able to take a break for ten minutes each hour.

In a memorandum dated March 23, 1994, the employing establishment assigned appellant to a temporary light-duty position based upon the restrictions contained in the March 17, 1994 work restriction evaluation with one exception. The employing establishment indicated that it would not honor the physician's recommendation that appellant be allowed to take a break for ten minutes each hour. The employing establishment indicated that it was not fair to the employees if appellant was allowed a break for ten minutes each hour and stated "If it is required that you break for ten minutes every hour, you must hit the clock and go home."

¹ The record shows that appellant returned to work in January 1988 after filing an Equal Opportunity Employment (EEO) complaint on January 15, 1987.

In a report dated April 12, 1995, Dr. E.H. Williams, II, a clinical psychologist, stated that appellant was experiencing job-related stress and anxiety and would be unable to perform her duties until further notice.

In a report dated July 20, 1995, Dr. Williams provided a history of appellant's condition and related that appellant felt that she had been harassed at work. He related her complaint that in January 1997 she was fired because she failed scheme training and that she was discriminated against because she was not given an opportunity to take the test again. Dr. Williams related appellant's general complaint that various supervisors had harassed her. He diagnosed major depression and adjustment disorder with mixed emotional features.

By decision dated August 16, 1995, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish causal relationship between her claimed emotional condition and compensable factors of employment.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her employment.

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.² 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.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

Regarding appellant's complaints that the employing establishment changed her work schedule, did not fairly rotate lunch breaks, and required her to attend a workshop for employees who had experienced repeat accidents at work, the Board finds that these allegations relate to

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁶ Although the handling of such matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁷ However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁸ In this case, appellant has provided insufficient evidence that the employing establishment erred or acted abusively or unreasonably in the handling of these administrative matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that she was unfairly terminated from her position for failing to qualify on a test. The record shows that appellant returned to work in January 1988 after filing an EEO complaint. However, the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.⁹ In this case, there is insufficient evidence that the employing establishment erred or acted abusively or unreasonably in terminating appellant from her position and therefore this allegation is not deemed a compensable factor of employment.

Regarding appellant's allegation that she was denied a position for which she had applied, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹⁰ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ 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 of harassment or discrimination are not compensable under

⁶ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁷ *Id.*

⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁹ *Michael Thomas Plante*, *supra* note 6.

¹⁰ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

the Act.¹² In the present case, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.¹³ Appellant alleged that supervisors harassed her and discriminated against her on the basis of race, sex, use of leave and the fact that she had filed EEO complaints against the employing establishment, but she provided no corroborating evidence, such as witness statements, to establish the allegations of harassment and discrimination.¹⁴ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's complaint that her work restrictions were not honored, the record shows that a physician recommended that the employing establishment allow her a ten minute break each hour but that the employing establishment refused to grant this work restriction. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.¹⁵

Appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. As noted above, appellant must also submit rationalized medical evidence establishing that her claimed emotional condition is causally related to an accepted compensable employment factor.¹⁶

In a report dated April 12, 1995, Dr. Williams, a clinical psychologist, stated that appellant was experiencing job-related stress and anxiety and would be unable to perform her duties until further notice. However, Dr. Williams did not explain which specific work factors were responsible for appellant's claimed condition and therefore this report is insufficient to establish that appellant sustained an emotional condition causally related to a compensable factor of her employment.

In a report dated July 20, 1995, Dr. Williams provided a history of appellant's condition and related that appellant felt that she had been harassed at work. He related her complaint that in January 1997 she was fired because she failed scheme training and that she was discriminated against because she was not given an opportunity to take the test again. Dr. Williams related appellant's complaint that various supervisors had harassed her. He diagnosed major depression and adjustment disorder with mixed emotional features. As noted above, the factors identified by Dr. Williams in this report as factors contributing to appellant's claimed emotional condition, being fired and being harassed and discriminated against have been deemed not to be compensable factors of employment due to lack of supporting evidence. Dr. Williams did not address the allegation that appellant was being required to work beyond her restrictions.

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁴ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁵ *Diane C. Bernard*, 45 ECAB 223 (1993).

¹⁶ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

Therefore this report is insufficient to establish that appellant sustained an emotional condition causally related to a compensable factor of employment.

The August 16, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 20, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member