

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA M. BRODERICK and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Boston, MA

*Docket No. 98-2490; Submitted on the Record;
Issued August 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met her burden.

On May 23, 1997 appellant, then a 51-year-old maintenance operation support clerk, filed a Form CA-2, occupational disease claim, alleging that factors of employment caused stress, anxiety, headaches, loss of sleep and hypertension. She stopped work on May 7, 1997. In an attached statement, she indicated that in December 1996 she was notified that her department was being investigated, that in March 1997 her supervisors began "to scrutinize" her actions, that in April 1997 she was given an official discussion and that on May 7, 1997 she was verbally assaulted by Barbara Gallagher, a coworker.

On May 23, 1997 appellant also filed a Form CA-1, traumatic injury claim, alleging that the confrontation on May 7, 1997 caused her condition. On the reverse of the claim form, a witness, Janet Healy, advised that on May 7, 1997 she had been in the ladies room with appellant and Ms. Gallagher. Ms. Healy noted that appellant later went to the locker room and when she returned was flushed and hyperventilating. She noted that appellant then went to the medical unit.¹

Following further development, by decision dated May 21, 1998, the Office of Workers' Compensation Programs denied the claim, finding that appellant did not sustain an injury in the performance of duty. The instant appeal follows.

¹ Ms. Healy also submitted a statement dated May 28, 1997 in which she again described the events of May 7, 1997.

Regarding the altercation on May 7, 1997 appellant submitted a statement dated May 11, 1997² in which she stated that at approximately 10:15 a.m. she, Ms. Healy and Ms. Gallagher were in the ladies room. Shortly thereafter, she was in the ladies locker room when Ms. Gallagher entered and started “screaming and waving her hands wildly as she came directly towards me.” Appellant continued:

“As best I could understand her, she was lashing out accusations that I had talked about her in the ladies room in my conversation with [Ms.] Healy. [Ms.] Gallagher continued screaming other unfounded accusations, indicating that I was out to get her. She did not stop her verbal tirade long enough for me to respond.

“As she continued to move closer to me, still waving her hands wildly, I began to shake and fear for my safety. At this point, another employee, Lois Wallace entered the room.... [Ms. Gallagher] continued her tirade. My whole body started to tremble. I started to get very hot and began to perspire. I could sense that I was losing control of my body. My heart was pounding and I knew I had to get away from [Ms. Gallagher], knowing that she was totally out of control but not knowing what she would do next.

“At this point, [Ms. Gallagher] turned around and realized that [Ms. Wallace] had entered the room and had observed her continuing outburst. [Ms. Wallace] suggested that [Ms. Gallagher] sit down and get herself under control. [Ms. Gallagher] refused and walked out yelling something at [Ms. Wallace].”

Appellant noted that, after obtaining permission from her supervisor, she went to the medical unit. She left with assistance from her sister at approximately 1:30 p.m.

Ms. Wallace provided several statements regarding May 7, 1997. She described entering the ladies locker room and witnessing “what appeared to be a confrontation” between appellant and Ms. Gallagher, stating that Ms. Gallagher was speaking to appellant in an angry tone. She stated that she only witnessed a small portion of the conversation “but it was apparent both parties were extremely upset by it.” She noted that appellant “looked awful,” was flushed and very upset and told her she did not feel well.

Dale A. Horsman, supervisor of maintenance operations support, submitted several statements in which he advised that on May 7, 1997 at approximately 10:40 a.m. appellant asked to go to the medical unit. At approximately 1:20 p.m. he was informed by the medical unit that she had been sent home and would see her own doctor. In a statement dated May 28, 1997, Mr. Horsman indicated that he had interviewed appellant, Ms. Healy, Ms. Gallagher and Ms. Wallace.

² Appellant submitted a second statement received by the Office on August 18, 1997 in which she again described the May 7, 1997 altercation.

In a statement dated May 30, 1997, Ms. Gallagher stated that it became obvious to her when she went to the ladies room on May 7, 1997 that appellant and Ms. Healy were talking about her or saying something they did not want her to hear. She stated that she ran into appellant in the locker room and “told her that enough was enough and that I was sick and tired of this continuous harassment ... to leave me alone ... that she had hurt me enough and to stop.” Ms. Gallagher stated that appellant had caused her a great deal of stress and frustration, concluding:

“No one should have to come to work and feel this way or walk into the ladies room and be faced with a situation like that. I finally took the first step in any harassment case, which is to let the harasser know that you do n[ot] like what they are doing and that you want it to stop.”

Ms. Gallagher indicated that she had filed an occupational disease claim in February 1997.

In an August 11, 1997 statement, Andrew Sacco, maintenance manager, indicated that there was a perception at the employing establishment that Ms. Gallagher received preferential treatment and that the relationship between appellant and Ms. Gallagher was strained.

The relevant medical evidence³ includes a treatment note dated May 7, 1997 in which Dr. Alfred Kaplan, a Board-certified internist, diagnosed anxiety and hyperventilation. Dr. Steven E. Carr, a Board-certified internist, submitted a form report dated May 7, 1997 in which he diagnosed hypertension and stress reaction and advised that appellant could not work. In a disability slip dated May 13, 1997, he advised that appellant could not work from May 7 to 26, 1997. By report dated June 23, 1997, Dr. Carr advised that he examined appellant on May 7, 1997 when she described a history of being verbally attacked at work, after which she became very upset. He noted that she was still agitated and upset when seen by him and diagnosed an acute stress reaction based on her symptoms and physical appearance. Dr. Carr advised her to take a temporary leave from work. He noted that upon reexamination on May 13, 1997 she was still upset and crying and that on May 23, 1997 she was much improved. Dr. Carr concluded, “I believe due to her hypertension and acute situational reaction, she was disabled from May 7 to 27, 1997 and totally unable to work.” In an August 19, 1997 report, Dr. Carr advised that in May 1997 appellant was having an acute anxiety reaction due to “her situation at work.”

Regarding appellant’s occupational disease claim, she submitted several statements in which she alleged that in December 1996 she began to feel stress, anxiety, depression, headaches, loss of sleep and hypertension in the workplace, noting that at that time she was notified an investigation was being undertaken and since that time she had been “harassed, followed, been given official discussion and been denied the opportunity to work the overtime that has been available.” She noted that in February 1997 she and other maintenance employees

³ Appellant also submitted reports from Marianne McGrath, a licensed social worker. The Board notes that a report from a licensed clinical social worker is not medical evidence, as it is not the report of a “physician” as defined in section 8101(2) of the Federal Employees’ Compensation Act; see *Frederick C. Smith*, 48 ECAB 132 (1996).

were interviewed regarding Ms. Gallagher's claim and that beginning in March 1997 Ms. Horsman and Mr. Lymon began "to scrutinize" her actions, which she felt were a result of her filing Equal Employment Opportunity Commission (EEO) and grievance complaints. Appellant continued that in April 1997 she was unfairly given an official discussion for failure to adhere to official breaks and that the overtime schedule was changed to preclude her from working overtime. She stated she "began noticing other subtle changes" occurring that affected her and not other employees. After sending a letter to the District Manager, appellant was called in Mr. Horsman's office where he "talked down" to her, yelled and pointed his finger at her in a manner that she deemed threatening. She noted the May 7, 1997 altercation with Ms. Gallagher and concluded that she had been exposed to harassment on a daily basis, specifically mentioning a February 10⁴ interview with Mr. Sacco whose "demeanor and attitude towards me was condescending and belittling." She stated that subsequently contact with other employees became strained and other managers and supervisors began ignoring her, stating "most were told not to speak to me." Appellant stated that the confrontation on May 7, 1997 was the culminating factor.⁵

Appellant also submitted an EEO agreement dated December 26, 1995, in which appellant voluntarily withdrew her request for counseling based on the stipulations:

"All employees will be treated equally, with dignity and respect. I will not be discriminated against because of my age and/or sex. I will not be subjected to harassment, intimidation, or retaliation for exercising my rights to the EEO administrative process."

The record also contains EEO complaints dated September 27, 1995 and March 29, 1996. A June 6, 1996 EEO decision indicated that a complaint filed by appellant on May 15, 1996 had been dismissed by the employing establishment. Appellant also submitted records indicating that grievances had been filed on April 30, 1996 and April 17 and May 8, 1997.⁶

Mr. Horsman submitted statements in which he indicated that on April 4, 1997 he had given appellant an official discussion because she was not adhering to the break schedule. He noted that she responded by letter asking that the official discussion be expunged and that on April 30, 1997 he denied her request. Mr. Horsman stated that she told him she did not like his tone of voice and felt that he was singling her out. He indicated that this was not true.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant 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

⁴ A year was not indicated.

⁵ Appellant submitted additional statements in which she described these incidents in more specific detail. She also submitted statements concerning events that occurred after she filed the instant claims.

⁶ The record also contains a May 2, 1997 statement in which Ms. Healy discusses a conversation between appellant and Mr. Horsman that day. Ms. Healy, however, does not indicate that she overheard the conversation.

opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁷ Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Act.⁸ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁹

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act.¹⁰ But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ Investigations are administrative functions of the employing establishment, that do not involve an employee's regularly or specially assigned duties and are not considered to be employment factors.¹² Likewise, the mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.¹³ In this case, appellant has submitted no evidence supporting her allegation that the employing establishment acted unreasonably in these matters.

Appellant has also alleged that she was subject to general harassment and discrimination by the employing establishment for filing EEO and grievance complaints. 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 the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁴ Appellant has submitted

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *See Martha L. Watson*, 46 ECAB 407 (1995).

¹² *See Ruth S. Johnson*, 46 ECAB 237 (1994).

¹³ *See Mary L. Brooks*, 46 ECAB 266 (1994).

¹⁴ *See Alice M. Washington*, 46 ECAB 382 (1994).

no evidence establishing that the alleged harassment occurred. She, therefore, failed to establish this factor of employment.

Appellant has attributed her emotional condition to a verbal exchange, which occurred on May 7, 1997 with Ms. Gallagher, a coworker. While she submitted evidence, which indicated that the May 7, 1997 incident occurred, the Board finds that the evidence does not rise to the level of harassment. Ms. Wallace stated that she witnessed a small portion of the conversation noting only that both parties became “extremely upset” by it. She did not indicate what was said by Ms. Gallagher to appellant. The evidence pertaining to the May 7, 1997 incident is vague and does not establish any inappropriate threats or remarks were made by Ms. Gallagher. Appellant’s perceptions pertaining to any remarks made by Ms. Gallagher are not established as harassing in this case. Appellant, therefore, did not establish a compensable employment factor and, as such, did not meet her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.¹⁵

The decision of the Office of Workers’ Compensation Programs dated May 21, 1998 is hereby affirmed.

Dated, Washington, D.C.
August 3, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).