

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of QUEEN A. UPTON and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Kansas City, MO

*Docket No. 98-2571; Submitted on the Record;  
Issued December 1, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has 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 and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On April 9, 1997 appellant, then a 37-year-old mail processor, filed a traumatic injury claim<sup>1</sup> alleging that on March 3, 1997 she experienced depression caused by a discussion she had with Joe Needles, her supervisor, regarding her permanent physical restrictions.<sup>2</sup> Appellant's claim was accompanied by factual and medical evidence.

In a May 14, 1997 letter, the Office asked the employing establishment to submit factual evidence regarding appellant's claim. By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant to submit additional factual and medical evidence supportive of her claim.

In an August 25, 1997 decision, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty.

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<sup>1</sup> The record reveals that, subsequent to the filing of the instant claim, the Office of Workers' Compensation Programs treated this claim as a claim for an occupational disease (Form CA-2).

<sup>2</sup> Prior to the instant claim, appellant filed a Form CA-2 assigned number A11-0084690 for right shoulder pain. The Office accepted appellant's claim for bursitis of the right shoulder. Appellant's claim was subsequently expanded to include the acceptance of bilateral carpal tunnel syndrome, right shoulder concussion, right thumb tendinitis, left wrist tendinitis, right ulnar collateral ligament instability. Appellant also underwent surgery for her right shoulder bursitis, right carpal tunnel release and right thumb fusion.

In a November 24, 1997 letter, appellant requested reconsideration of the Office's decision.

By decision dated December 18, 1997, the Office denied appellant's request for reconsideration on the grounds that the request neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant a review of the prior decision.

In a January 19, 1998 letter, appellant requested reconsideration of the Office's decision.

By decision dated March 27, 1998, the Office denied modification of its prior decisions.

In an undated letter received by the Office on June 25, 1998, appellant requested reconsideration of the Office's decision accompanied by factual and medical evidence.

In a July 7, 1998 decision, the Office denied modification of its prior decisions.

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.<sup>3</sup>

Perceptions and feelings alone are not compensable. 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 factors of her federal employment.<sup>4</sup> To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>5</sup>

In this case, appellant has failed to establish a compensable factor of employment under the Act. Several of appellant's allegations fall into the category of administrative or personnel actions. An employee's emotional reaction to an administrative or a personnel matter is not generally covered under the Act. Thus, an emotional reaction to matters pertaining to leave is

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>5</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

not generally covered under the Act without error or abuse on the part of the employing establishment.<sup>6</sup> Similarly, an employee's complaint concerning the manner in which a supervisor performs his duties or exercises his discretion fall, as a rule, outside the scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.<sup>7</sup>

Appellant has alleged that the employing establishment's failure to accommodate her physical restrictions while on limited duty caused her emotional condition. Specifically, appellant noted a discussion she had with Mr. Needles on March 3, 1997 regarding his desire to change the chair in which she sat during her breaks. Appellant stated that Mr. Needles required her to present documentation regarding her medical condition.

Mr. Needles' desire to change the chair used during her break and his request that appellant give him medical documentation regarding her condition involve an administrative matter<sup>8</sup> and appellant has failed to establish that Mr. Needles committed error or abuse in handling these matters. In response to appellant's allegation regarding his conversation with her on March 3, 1997, Mr. Needles stated in a narrative statement of the same date that appellant told him that she did not have a light-duty card and that she was not sure of any limitations. He further stated that appellant told him that there were some restrictions in her job description and that she would give him a copy of this job description. Mr. Needles also stated that he told appellant that he was thinking about specifying an area in which she could take her "rest breaks" and that she was not to make telephone calls during her rest breaks. He noted appellant's explanation regarding the frequency of her "rest breaks" and indicated the schedule for such breaks.

In an April 18, 1997 narrative statement, Mr. Needles reiterated that he had a discussion with appellant on March 3, 1997 regarding her breaks and that he asked appellant for documentation in support of her medical limitations. Mr. Needles explained that appellant was using the telephone during her breaks and that her files did not contain any medical limitations requiring the use of a chair. He further explained that he wanted to eliminate the practice of taking "rest breaks" in the work break area to distinguish between the two breaks. There is no evidence that Mr. Needles erred or acted abusively in requiring appellant to submit medical documentation regarding her condition. Therefore, appellant has not established a compensable factor of employment.

Appellant has also alleged that she was harassed and discriminated by her supervisors and harassed by her coworkers. Specifically, appellant alleged that, after her discussion with Mr. Needles on March 3, 1997, she was instructed by Susan Paloma, a supervisor, to return to work. Appellant further alleged that she had permission from Mike Fritz, an employing establishment supervisor, to use the telephone and that Connie Gilmore, a supervisor, told her to get off the telephone, which she refused to do. Additionally, appellant alleged that Mr. Needles

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<sup>6</sup> *Daryl R. Davis*, 45 ECAB 907 (1994).

<sup>7</sup> *Abe E. Scott*, 45 ECAB 164 (1993).

<sup>8</sup> *See Ruthie M. Evans*, 41 ECAB 416 (199).

told her not to talk to her coworkers on the floor. Appellant has contended that her coworkers put notes on the limited-duty table where she and other limited-duty workers sat stating that this was the table for the sick, lame and lazy. Appellant also contended that a coworker passed gas in front of the table leaving an unpleasant odor. Appellant stated that when mail processing had parties at work, neither she nor the other limited-duty workers were invited and that people at the parties would eat in front of them.

Appellant further stated that every day she and her limited-duty coworkers came to work, they would have to look for their chairs and she would have to look for her pillow. Appellant noted that after she returned to work after being on leave for three or four days, her pillow disappeared and no one knew where it was. She stated that she filed a grievance, but the employing establishment never replaced her pillow. Appellant also stated that management split up everybody who worked at the table so that they could not communicate with one another. In addition, appellant stated that she was watched by Supervisors Peggy Cole and Sam Woodrum and that Ms. Cole denied her request for leave.

The Board has held that for harassment to give rise to a compensable disability or condition under the Act, there must be some evidence that acts of harassment did, in fact, occur.<sup>9</sup> Mere perceptions of harassment are not compensable under the Act.<sup>10</sup> In this case, appellant's allegation regarding supervision by Mr. Needles, Ms. Paloma, Ms. Gilmore, Ms. Cole and Mr. Woodrum involves an administrative matter. It is an administrative function to supervise employees and see that they are tending to their tasks during work hours.<sup>11</sup> In response to appellant's allegation concerning Mr. Needles' instruction that she refrain from talking to other employees while on the floor, he stated in a March 3, 1997 memorandum that he saw appellant talking to another employee who was working. He further stated that he asked appellant what she was doing and noted her response that she was checking her mail. However, Mr. Needles stated that, contrary to appellant's response, she had not checked her mail or looked at any volume of work in any trays or in the machine. Mr. Needles further stated that he instructed appellant not to go into other work areas and talk to employees and he repeated his instruction not to make telephone calls during her rest breaks.

In his April 18, 1997 narrative statement, Mr. Needles provided that appellant had been instructed about her absence from her assigned work area on September 11 and December 31, 1996 and March 3, 1997. He reiterated appellant's response to his question as to what she was doing when he observed her talking to a coworker who was working at that time. Mr. Needles noted that appellant provided on her Form CA-1 that she was talking to another employee who was working and that Ms. Paloma instructed appellant on this matter on September 11 and December 31, 1996. Regarding Ms. Gilmore's instruction to appellant about her telephone usage, Mr. Needles stated that Ms. Gilmore was aware of appellant's work, lunch and work-break schedule. He then stated that Ms. Gilmore should have questioned appellant's use of the

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<sup>9</sup> *Ruth C. Bordon*, 43 ECAB 146 (1991).

<sup>10</sup> *See Ruthie M. Evans*, *supra* note 8.

<sup>11</sup> *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).

telephone outside of her scheduled breaks and lunch. The record reveals Ms. Paloma's December 31, 1996 notes indicating that she observed appellant away from her work area on that date and that appellant agreed to return to her work area.

In her notes dated September 11, 1996, Ms. Paloma indicated that she had a discussion with appellant about staying in her work area and obtaining permission to leave from her supervisor. Ms. Paloma further indicated that appellant understood that she needed to let her supervisor know when she left the area. Similarly, in a March 3, 1997 note, Sandy McKim, an employing establishment supervisor, indicated that she advised appellant to obtain permission from her supervisor when she left the floor for the restroom, break and lunch.

Although appellant submitted witness statements from her coworkers indicating that she was being watched by her supervisors, there is no evidence that appellant's supervisors erred or acted abusively in monitoring her work activities.<sup>12</sup> Appellant was observed away from her work area, talking to employees who were working and using the telephone by her supervisors when she should have been working. Thus, it does not appear that appellant's supervisors were being unreasonable or abusive in monitoring her work activities. Appellant has not established a compensable employment factor under the Act.

Further, appellant's allegations of harassment by her coworkers are not supported by any substantial, reliable or probative factual evidence of record. In an April 18, 1998 response to appellant's allegation concerning the treatment she and her limited-duty coworkers received from other employing establishment workers, Mr. Needles stated that he had no complaints from appellant or any other employee about anyone putting notes on the first floor table used by limited-duty employees. He also stated that he knew of no notes placed on this table. In the absence of specific incidents of harassment that are substantiated by the record, the Board finds that appellant has not alleged a compensable factor of employment.

Ms. Cole's denial of appellant's request for leave involves an administrative or personnel matter and there is no evidence that Ms. Cole erred or acted abusively in handling this matter.<sup>13</sup> Similarly, the filing of numerous grievances by appellant against the employing establishment regarding medical limitations, discrimination and harassment, a letter of warning and removal from the employing establishment involve administrative matters. Although the handling of employee evaluations and related grievance procedures are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>14</sup> While the record contains settlement agreements concerning appellant's grievances that were favorable to appellant, they do not indicate that the employing establishment committed error or abuse in

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<sup>12</sup> Appellant submitted witness statements in support of her allegation that she was being watched by her supervisors and that she was required to submit medical documentation regarding her condition. However, the Board notes that these statements are not signed. The Board has held that unsigned evidence, lacking proper identification, may be considered of diminished probative value. See *Eugene J. Anderson*, 40 ECAB 452 (1989). The Board finds that the unsigned statements submitted by appellant are of diminished probative value and thus insufficient to establish a compensable factor of employment under the Act.

<sup>13</sup> *Donald E. Ewals*, 45 ECAB 111, 124-25 (1993).

<sup>14</sup> *Id.*

handling these matters. Rather, several of these agreements indicate that they were entered into without admissions of guilt or wrongdoing and without prejudice to either party.<sup>15</sup>

Inasmuch as appellant has not alleged any incidents of employment that occurred in the performance of duty as the cause of her emotional condition, appellant has not met her burden of proof.

The July 7 and March 27, 1998 and December 18, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
December 1, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>15</sup> The Board notes that appellant submitted a December 31, 1997 decision from the Merit Systems Protection Board reversing the employing establishment's removal of an employee. However, this decision did not involve appellant's grievances.