

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EULA ELLINGTON and U.S. POSTAL SERVICE,
POST OFFICE, Redwood City, CA

*Docket No. 98-1361; Submitted on the Record;
Issued February 1, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On October 30, 1996 appellant, then a 48-year-old letter carrier, filed a claim alleging that she sustained an emotional condition which she attributed to her employment. She alleged that a supervisor, Arthur Sanchez, harassed her and made a racial remark to her on October 30, 1996. Appellant related that on that date she was casing the mail when Mr. Sanchez complained about having to destroy some bulk mail and she explained to him that the person that formerly performed this task had retired. She related that Mr. Sanchez told her that he had transferred from another office where all he had to do was supervise. Appellant related that Mr. Sanchez went to the front desk to answer a page and then returned to her work area and began to ask her a series of questions. He asked her whether she was on light duty, what time she was scheduled to arrive at work, how many hours she worked, and other questions and then appellant asked him what was wrong with him and he said that she could return to casing. Appellant related that after a few minutes she stepped away from her case and told Mr. Sanchez that she was upset at the way he had spoken to her. She related that he replied, "Ah, you blacks always get upset." Appellant stated that she told Mr. Sanchez that she was going to report him for the remark and he replied that he did not care. She stated that she was using the telephone to try to find assistance when Mr. Sanchez yelled at her to hang up the phone and pointed his finger at her. Appellant stated that she told him that she had the right to report him for his racial comment but that he continued yelling at her. She stated that she was afraid of Mr. Sanchez and hung up the phone and that Mr. Sanchez had a briefcase in his hand and it appeared to her that he might strike her with it. Appellant related that she was traumatized and left to seek medical attention. On the reverse side of the claim form, Mr. Sanchez related that appellant became angry on October 30, 1996 because she was instructed to resume her work after talking and standing around for approximately 20 minutes. He stated that appellant created a problem on the work floor by yelling and screaming.

In a statement dated October 30, 1996, Mr. W.A. Cochran, related that Norma Munoz had been present at the incident on October 30, 1996 and told him that Mr. Sanchez did not make any racial statements.

In a report dated November 1, 1996, Dr. William Firtch related appellant's complaint that a supervisor had made a racial remark and that she felt depressed. He diagnosed stress and prescribed some medication.

In a written statement dated November 19, 1996 and in testimony at a hearing held before an Office hearing representative on December 16, 1997, Mr. Sanchez stated that on October 30, 1996 he was speaking to appellant about how it was to be a new supervisor and then he was paged to report to the reception area. He stated that when he returned 10 minutes later he saw appellant speaking to another employee and 5 minutes later she was still talking to the same employee. Mr. Sanchez stated that he asked appellant if she was on overtime and she replied that she was and answered some other questions he posed. He stated that she then asked him why he was asking her questions and he told her that he was the supervisor and he would like for her to get back to work at her case. Mr. Sanchez related that appellant got very angry and said, "it [i]s o.k. if a supervisor talks to me but if I talk to a carrier I get into trouble." She then said, "Don't you ever talk to [me] again" and then walked back to her duty station and began to case mail. Mr. Sanchez related that she then called over to him and again told him, "Don't you ever talk to me" and he simply walked away. He related that he was talking to two employees near the time clock when appellant came out of her case yelling that she was going to report him and she yelled, "I [a]m going to [say that] you said all blacks get upset easy." Mr. Sanchez stated that he replied that he had not said this and that appellant was creating a disturbance and he gave her instructions to return to her case and continue working but she yelled that he could not intimidate her and that she was going to report him. He denied that he had made any racial statements or that he had threatened appellant with his briefcase.

In a report dated December 23, 1996, Dr. James Lake, a psychiatrist, related that he had seen appellant on three occasions between November 1 and December 23, 1996 and that approximately 10 days prior to the initial appointment she was allegedly threatened by three individuals while she was delivering mail and these individuals attempted to obtain mail that did not belong to them. He related that appellant was not physically harmed but was shaken and reported the incident to a supervisor who told her, "you blacks always get upset." He diagnosed adjustment disorder with mixed anxiety and depressive symptoms and he stated his opinion that appellant's condition was related to work stress including a pending inquiry into her allegations of harassment.

In a report dated December 30, 1996, Dr. Lake stated that he wished to amend his December 23, 1996 report as appellant had advised him of inaccuracies. He stated that the incident in which appellant was accosted while delivering mail had occurred approximately two weeks before the October 30, 1996 incident.

By decision dated January 16, 1997, the Office denied appellant's claim for compensation benefits.

By letter dated January 31, 1997, appellant requested an oral hearing before an Office hearing representative.

In statements dated February 17, May 25, and September 2 and 15, 1997, Arturo Hernandez, a coworker, related problems that he had experienced with Mr. Sanchez and another supervisor. He did not address the October 30, 1996 incident involving appellant and Mr. Sanchez.

In a statement dated August 15, 1997, union officer Lilibeth Buencamino related appellant's allegation that on October 30, 1996 Mr. Sanchez yelled racial statements at her. Ms. Buencamino did not indicate that she had personally witnessed the incident.

On December 16, 1997 a hearing was held before an Office hearing representative at which time appellant and Mr. Sanchez testified.

By decision dated January 28, 1998, the Office hearing representative affirmed the Office's January 16, 1997 decision.

The Board finds that appellant has not met her burden of proof to establish 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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

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.³ 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.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473 (1993).

adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In the present case, appellant alleged that she sustained an emotional condition as a result of an incident of harassment and discrimination on October 30, 1996 involving a supervisor, Mr. Sanchez. 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.⁷ 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 the Act.⁸ In the present case, appellant alleged that on October 30, 1996 she complained to Mr. Sanchez that she did not like the way he spoke to her and asked her questions and that he told her, "You blacks always get upset," yelled at her to get off the telephone when she attempted to report the incident, and she felt he might strike her with his briefcase. Mr. Sanchez denied that he made this remark or threatened appellant with a briefcase and stated his belief that appellant threatened to report to the employing establishment that he had made the remark because he told her to get back to work while she was having a conversation with another employee. In a statement dated October 30, 1996, Mr. W.A. Cochran related that Norma Munoz had been present at the incident on October 30, 1996 and told him that Mr. Sanchez did not make any racial statements. Appellant did not submit any statements from witnesses who saw the incident and corroborated her allegations against Mr. Sanchez regarding the October 30, 1996 incident.⁹ In a statement dated August 15, 1997, Ms. Buencamino related appellant's allegation that on October 30, 1996 Mr. Sanchez yelled racial statements at her but there is no indication that Ms. Buencamino witnessed the incident. She was apparently only relating what appellant told her. Appellant has not submitted sufficient evidence to establish as factual her allegations that Mr. Sanchez made a racial remark or harassed or threatened her on October 30, 1996.¹⁰ Thus, appellant has not

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ As noted above, the statements of record from Mr. Hernandez addressed only his own allegations concerning Mr. Sanchez, not the allegations of appellant and his statements are therefore of no probative value in this case.

¹⁰ 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).

established a compensable employment factor under the Act in regard to the October 30, 1996 incident.

In regard to the incident when appellant alleged that she was accosted by three individuals while delivering mail, she has submitted insufficient information or details to establish this incident as factual. Therefore, this incident is not deemed a compensable factor of employment.

For the foregoing reasons, appellant has not established a compensable employment factor under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹¹

The January 28, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 1, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki, supra* note 5.