

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MELEISA A. BETTS and U.S. POSTAL SERVICE,  
NORTH METRO CENTER, Duluth, GA

*Docket No. 00-1241; Submitted on the Record;  
Issued December 21, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On April 4, 1998 appellant, then a 34-year-old clerk, filed an occupational disease claim alleging that her emotional condition was caused by mental abuse and physical assault by her supervisor, Kathleen Thomas. Appellant stated that she was denied overtime work, the work schedule she desired and leave requests. She was asked to submit medical documentation for leave used, she was not selected for a job on which she bid, she was told not to wear gloves while working on or near machinery and she was reprimanded by management for failing to follow procedures. She also alleged: On August 3, 1996, supervisor, E. Rounsaville received an emergency telephone call for appellant and asked the caller to call back on the designated emergency number but no one answered and appellant never received the message.<sup>1</sup> On August 26, 1996, Ms. Thomas screamed at her about her job performance, called her a brat and said she would put her out of the building.<sup>2</sup> On February 28, 1997 Ms. Thomas asked her for a copy of her vacation leave request and screamed at her, calling her a brat. On March 26, 1997 she was assigned to a workstation near an area that was being cleaned and the dust aggravated her sinus condition.<sup>3</sup> In June 1997 she fell at home one night and broke her arm because she was distracted by thoughts of harassment from Ms. Thomas. On March 24, 1998 Ms. Thomas

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<sup>1</sup> A grievance filed by appellant about this incident was resolved without any finding of error or abuse by the employing establishment.

<sup>2</sup> Appellant's Equal Employment Opportunity Commission (EEOC) complaint about this incident was dismissed.

<sup>3</sup> Appellant's grievance about this incident was resolved without a finding of error or abuse by the employing establishment.

screamed at her and hit her in the face with a pen.<sup>4</sup> On April 8, 1998 she was attending a meeting when Ms. Thomas mouthed the words “you are a dog” to appellant.

In a statement dated April 14, 1998, supervisor Patrick Battle related that on March 24, 1998 Ms. Thomas paged appellant because she was not at her workstation and told her that she was not to leave the workroom floor early to take a break. He stated that Ms. Thomas did not yell at appellant or point her finger or any object at her and did not act in a threatening or disrespectful manner.

Supervisor D.A. Butts stated that appellant had made false allegations against supervisors and managers when she did not get her way. She stated that appellant filed a complaint against her on one occasion when her request for leave was denied.

In an affidavit dated April 15, 1998, supervisor Carolyn Jones stated that on March 24, 1998 appellant told her that Ms. Thomas had yelled at her and shook a pencil near her face but did not touch her. She noted that Ms. Thomas denied appellant’s allegations and Mr. Battle confirmed Ms. Thomas’s version of the incident. Ms. Jones noted that appellant had filed several EEOC complaints but had voluntarily withdrawn the complaints. She stated that appellant had a history of poor work performance and filed complaints against supervisors attempting to help her improve her work performance.

In a statement dated April 27, 1998, Ms. Thomas related that on March 24, 1998 she paged appellant because she was not at her workstation and told her to take her break at the designated time. She denied raising her voice or pointing a pen in appellant’s face. She stated that appellant had a history of filing false complaints concerning her supervisors.

In statements dated May 14 and October 6, 1998, Ms. Thomas denied that she touched appellant’s face with a pen on March 24, 1998. She stated that appellant filed complaints against supervisors to intimidate them and discourage them from giving her instructions and she resented anyone she could not bully. Ms. Thomas indicated that she told appellant not to wear gloves while using machinery because it was not safe and appellant became angry. Regarding appellant’s broken arm, Ms. Thomas stated that appellant told employee Wanda Good that the injury was caused by a dog knocking her down and later claimed that she fell and broke her arm while thinking of Ms. Thomas. She denied that she had ever verbally harassed appellant. Ms. Thomas stated that she had instructed appellant to come to the front office on occasions for discussions about her job performance when she was not performing her job properly or would not lower her voice.

In a statement dated September 27, 1998, supervisor Ryan Spencer stated that appellant was moved to another supervisor’s area because she complained about Ms. Thomas every day but he did not believe that Ms. Thomas was harassing her. He indicated that he moved appellant merely to defuse the situation.

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<sup>4</sup> Appellant stated that she had no witness to this incident. She filed a \$5,000.00 civil lawsuit against Ms. Thomas for emotional distress, outrageous conduct and defamation of character, which was dismissed by the court. She also sought criminal prosecution of Ms. Thomas for assault and battery. The outcome of this criminal action is not indicated in the record but Ms. Thomas stated that the request for an arrest warrant was denied.

On October 2, 1998 coworker Tracey Ware stated that she had witnessed Ms. Thomas yelling and harassing appellant on several occasions. She did not provide any dates or details regarding these incidents.

On October 6, 1998 coworker Stephanie Brown stated that appellant had told her that Ms. Thomas had verbally abused her, harassed her by constantly marching her to the front office to speak with higher authorities and tried to get appellant into trouble. Ms. Brown stated that she had not personally witnessed these incidents between appellant and Ms. Thomas.

In statements dated October 6 and 7, 1998, employees Ronnie Middlebrooks and David Williams related that they did not hear Ms. Thomas call appellant a dog at the April 8, 1998 meeting. Mr. Williams stated that he was seated next to Ms. Thomas and appellant was on the opposite side of the room.

In a statement received by the Office of Workers' Compensation Programs on October 8, 1998, coworker Gwen Baxter stated that she had seen Ms. Thomas harass appellant on several occasions. However, she provided no dates or other details.

Appellant submitted medical evidence in support of her claim.

In reports dated May 8 and June 4, 1998, Dr. E. Clifford Beal, a psychiatrist, diagnosed an adjustment disorder with depressed mood and indicated that the condition was caused by harassment at work.

In a report dated May 14, 1998, Dr. Emile Risby, a psychiatrist, stated that appellant had recurrent major depression due to job stress.

In a report dated June 26, 1998, Dr. Muhammed Abbasi stated that appellant was seen for depression and other conditions caused by work stress.

In a report dated September 11, 1998, Dr. E. Goodman Obot stated that appellant was being treated for stress, anxiety and depression which she believed was job related.

By decision dated January 14, 1999, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an emotional condition causally related to factors of her employment.

By letter dated October 23, 1999, appellant requested reconsideration and reiterated her earlier allegations.

Appellant also submitted additional medical evidence.

By decision dated November 29, 1999, the Office denied modification of its January 14, 1999 decision.

The Board finds that appellant failed to establish that she sustained an emotional condition while 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 or 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.<sup>5</sup> 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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 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.<sup>9</sup> 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.<sup>10</sup>

In this case, appellant attributed her emotional condition to a number of employment incidents and conditions. The Board must, thus, initially determine whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant's allegations regarding the employing establishment's denial of overtime work schedules and leave requests, as well as its assignments and procedures relate to administrative

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>8</sup> See *Effie O. Morris*, 44 ECAB 470, 473 (1993).

<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

<sup>10</sup> *Id.*

or personnel matters and are unrelated to the employee's regular or specially assigned work duties. Thus, they do not fall within the coverage of the Act.<sup>11</sup>

Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>12</sup> 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.<sup>13</sup> In this case, the employing establishment denied that it erred or acted abusively in its handling of administrative or personnel matters and appellant has provided insufficient evidence of error or abuse in these matters. 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 her regular duties, these could constitute employment factors.<sup>14</sup> 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.<sup>15</sup>

In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.<sup>16</sup> Appellant provided witness statements in support of her allegations of harassment but the witnesses either merely repeated what appellant told them or stated that appellant was harassed but provided no specific dates or details regarding the alleged incidents of harassment. Ms. Thomas denied that she called appellant a dog and two employees provided statements that they did not hear Ms. Thomas call appellant a dog at the meeting. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's fall at home resulting in a broken arm in June 1997, this incident did not occur at work or during work hours and thus, cannot be deemed a compensable factor of employment. Although appellant alleged that she fell because she was distracted by thoughts of harassment by Ms. Thomas, harassment, as noted above, has not been established as a compensable factor of employment.

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<sup>11</sup> See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

<sup>12</sup> *Id.*

<sup>13</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>14</sup> See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>15</sup> See *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>16</sup> 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).

Ms. Thomas stated that on March 24, 1998, she paged appellant because she was away from her workstation and told her to take her break only at the designated time. She denied that she yelled at appellant or pointed a pen in her face or hit her with a pen. Supervisor Patrick Battle witnessed the incident and supported Ms. Thomas's description of the events. Therefore, appellant has failed to establish the March 24, 1998 incident as a compensable factor of employment.

Appellant's belief that another employee filed a fraudulent workers' compensation claim does not concern appellant's regular or specially assigned duties and thus, cannot be deemed a compensable factor of employment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition while in the performance of duty.<sup>17</sup>

The decisions of the Office of Workers' Compensation Programs dated November 29 and January 14, 1999 are affirmed.<sup>18</sup>

Dated, Washington, DC  
December 21, 2001

Michael J. Walsh  
Chairman

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>17</sup> Because appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki, supra* note 9.

<sup>18</sup> Appellant submitted additional evidence on appeal. However, the Board's jurisdiction extends only to that evidence before the Office at the time of its decision. 20 C.F.R. § 501.2(c).