

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN L. STEPTOE and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 01-1054; Submitted on the Record;
Issued December 20, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
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.

On October 23, 2000 appellant, then a 37-year-old mail processor/clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that a male clerk made obscene remarks that caused her to become stressed.

In a November 8, 2000 statement, the employing establishment requested that appellant's claim be controverted as appellant had provided no documentation to substantiate that an injury occurred.

On November 7, 2000 the employing establishment offered appellant a limited-duty assignment, which was accepted by appellant on November 16, 2000.

In a December 12, 2000 letter, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish her claim and requested that she submit such. Appellant was advised that submitting a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment was crucial. Appellant was allotted 30 days to submit the requested evidence.

In a January 24, 2001 decision, the Office found that the evidence was not sufficient to establish that appellant sustained an injury at the time, place and in the manner alleged.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the course of employment.

The Federal Employee's Compensation Act¹ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course employment."³ "Arising in the course of employment" related to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.⁴

As the Board observed in the case of *Lillian Cutler*,⁵ however, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.⁶ 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.⁷

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* at § 8102(a).

³ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

⁵ 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.⁸ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the 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.⁹

In this case, appellant has not established a compensable factor of employment. The only information provided by appellant was on her claim form. She made an allegation that a male clerk made lewd comments and repeated them to her. She did not identify the clerk nor did she provide any other supporting documentation. Her allegation was vague and lacked details. Additionally, she alleged that the incident occurred on October 4, 2000, however, she did not report the incident until October 23, 2000. She did not provide any other documentation or medical reports to corroborate her claim that the incident occurred and that she suffered from an injury as a result of the alleged comments.

To the extent that disputes and incidents alleged as constituting harassment and discrimination are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁰ However, for harassment or discrimination to give rise to 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.¹¹ In the instant case, the employing establishment controverted the claim and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against.¹² For instance, the record does not contain any detailed statements from appellant or clearly impartial witnesses, which establish that a male coworker committed the harassment or discrimination as alleged in the form of lewd comments.

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 in the performance of duty.

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁹ *Id.*

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² 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).

The decision of the Office of Workers' Compensation Programs dated January 24, 2001 is affirmed.

Dated, Washington, DC
December 20, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member