

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HERMELINDA V. MONTGOMERY and U.S. POSTAL SERVICE,  
SAN FRANCISCO BULK MAIL CENTER, Richmond, CA

*Docket No. 99-2491; Submitted on the Record;  
Issued January 18, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant 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 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>1</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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</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>3</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>4</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 of Workers'

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

Compensation Programs, 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>5</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>6</sup>

On December 17, 1998 appellant, then a 52-year-old distribution supervisor, filed a claim for traumatic injury alleging that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated June 16, 1999, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

Appellant's principle allegation is that she was harassed and mistreated by her supervisor, Donna Barnes. With respect to appellant's assertions that Ms. Barnes directed her to discipline an employee who did not do anything wrong, walked through appellant's unit canvassing the area and watching the employees, and required appellant to schedule appointments through her secretary to discuss any problems she might have, yet called appellant to her office immediately when she herself perceived a problem, the Board has held that complaints concerning the manner in which a supervisor performed her duties as a supervisor or the manner in which the supervisor exercised her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act absent evidence in the administration of a personnel matter.<sup>7</sup> In support of her claim, appellant submitted a narrative statement from J. Williams, who confirmed that Ms. Barnes had called appellant, another supervisor and himself into her office to discuss the assigned duties of two equipment drivers, a George Banks, whom appellant supervised and another employee. While Mr. Williams confirmed that Ms. Barnes took issue with the duties these two men had been assigned to perform, and requested that their hours spent driving be reduced and that they spend more time working the floor, he did not state that Ms. Barnes had directed appellant to discipline Mr. Banks. Mr. Williams stated that, although appellant tried to explain her position on the matter, Ms. Barnes would not listen to her. Appellant also submitted a statement from Mr. Banks, who confirmed that appellant had called him to her desk on several occasions to "inquire" about his driving, and these occasions seemed to coincide with times that Ms. Barnes had observed him driving. Mr. Banks did not state, however, that he had been disciplined by appellant. In a narrative statement dated January 7, 1998, Ms. Barnes directly refuted appellant's allegations, stating that she had never directed appellant to take disciplinary action against

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<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Abe E. Scott*, 45 ECAB 164 (1993).

Mr. Banks or any other employee, but rather had asked appellant to investigate the matter. Ms. Barnes further explained that she did canvass appellant's work area as part of her responsibilities as manager of distribution operations, and, in the interest of efficient time management, did require that all employees schedule appointments when they wanted to speak with her. As appellant has not provided any evidence to support her allegation that her supervisor erred with respect to these administrative and personnel matters, appellant has not established a compensable employment factor under the Act.

Appellant also alleged that Ms. Barnes constantly humiliated her in front of her employees and other supervisors, required that she work overtime and wrongly denied her request for personal leave, and improperly discussed matters with the postmaster. The Board has held that, 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>8</sup> In the present case, appellant alleged that her supervisor made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>9</sup> In addition, appellant's allegations were directly refuted by Ms. Barnes. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.<sup>10</sup> As no compensable factor of employment has been established, the Board will not address the medical evidence.<sup>11</sup>

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<sup>8</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>9</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>10</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>11</sup> *Margaret S. Krzycki*, *supra* note 10.

The decision of the Office of Workers' Compensation Programs dated June 16, 1999 is hereby affirmed.

Dated, Washington, DC  
January 18, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member