U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MYLINDA S. CARLSON and U.S. POSTAL SERVICE,
POST OFFICE, Green Bay, WI

*Docket No. 00-1165; Submitted on the Record;*
*Issued March 28, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained an emotional condition causally related to factors of her federal employment.

On February 21, 1997 appellant, then a 39-year-old rural carrier, filed an occupational claim alleging that her extreme stress and anxiety was causally related to her federal employment. She attributed the following events as attributing to her stress: the 1996 mail counts for Rural Route 1 were changed by management and the resulting change resulted in decreased wages; her current supervisor, Roger Linder, harassed her and she was afraid of him; and she was told that she must use leave instead of requesting leave without pay (LWOP). Appellant stopped work on January 24, 1997 and returned to work on February 4, 1997.

In a decision dated September 30, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish a compensable factor of employment and, thus, failed to establish an injury arising in the performance of duty. Her subsequent requests for modification were denied, after a merit review was conducted, in decisions dated December 15, 1998 and December 7, 1999.

The Board finds that appellant has not established that she sustained an emotional condition causally related to her federal employment.

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.[1] 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

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[2]

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3]

Regarding appellant's allegations pertaining to the denial of using LWOP, as a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.[4] Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.[5] The facts of this case indicate that on January 8, 1997, the employing establishment issued a memorandum which stated "effective immediately, any request for [l]eave [w]ithout [p]ay (LWOP) in lieu of [a]nnual [l]eave will be given consideration after all [a]nnual [l]eave is exhausted." The same day the memorandum was issued, January 8, 1997, appellant requested LWOP for the periods February 24 through 28 and March 24 through 31, 1997. Her leave request was denied on January 10, 1997. In a statement supporting why appellant's leave request was denied, the employing establishment stated that although appellant's RCA was available, overtime could be incurred by virtue of mail volume and weather conditions. The employing establishment had emphasized that the above policy was enacted to deter the costs in terms of overtime and replacement employees. It further noted that appellant had not supplied any documentation of a specific need or reason to use LWOP instead of annual leave other than the fact that approval was provided in the past. The Board finds that as the employing establishment had an established policy regarding the use of LWOP in effect during the period in which appellant requested LWOP and appellant did not show why she could not use normal leave. The record does not establish error or abuse on the part of the employing establishment in the issuance of its denial of the requested LWOP on January 10, 1997.

Appellant also alleged harassment by her supervisor, Roger Linder. She described incidents which she considered to be harassing and which generated an uncomfortable feeling as

[2] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

[5] *Gregory N. Waite*, 46 ECAB 662 (1995).

occurring on November 7 and 19, 1996 and January 24, 1997. These incidents pertained to Mr. Linder wanting to conduct a route inspection, wanting to talk about the edit sheets pertaining to the 1996 mail count and talking to her while she was casing mail with no one else around. With respect to her general allegation of harassment, the evidence does not support appellant's allegations in this case.[6] An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.[7] Appellant has not submitted sufficient evidence to establish a compensable employment factor under the Act with respect to her allegations of harassment.

The majority of appellant's claim revolves around her disagreement with the 1996 mail count performed by management and a subsequent financial loss for which she feels she was unfairly penalized. Grievances and unfair labor practice charges were filed, which ultimately resulted in a May 1999 Equal Employment Opportunity Complaint (EEOC) settlement agreement in which all outstanding administrative complaints and grievances pertaining to the above issue were voluntarily withdrawn. There was no specific findings of wrongdoing, liability or discrimination by the employing establishment against appellant and she was awarded the sum of $1,3000.00 less applicable taxes. The Board notes that, as the May 1999 settlement agreement did not establish any error and or abuse on the part of the employing establishment with respect to the 1996 mail count performed by management, appellant has not established a compensable factor with respect to the 1996 mail count as an administrative matter.

However, review of the evidence submitted by appellant with respect to the grievances and unfair labor practice charges pertaining to the 1996 mail count establishes that appellant has identified a compensable employment factor. In her February 27, 1997 statement, Supervisor Cynthia A. Butschi stated that a rural carrier's salary is based on an annual mail count and evaluated pay. Appellant has maintained that she had accurately reported the 1996 mail count for rural Route 1 and was unfairly penalized when management decreased her reported figures. In an undated statement, Robert J. Magnuson, appellant's immediate supervisor at the time of the 1996 mail count, stated that he had past experience in rural route counts and that he conducted the mail count in September 1996. He advised that the number of boxes (499) submitted for rural Route 1 inspection was the correct box count at that time. An investigation of the route was conducted on June 2, 1997 as part of the grievance process. Thomas A. Patzke, an address management specialist and Joy Hillier, a steward, mutually agreed that the total box count in 1996 was 500. Ms. Hillier stated that all boxes in dispute were indeed present and accounted for. As the employing establishment paid appellant based on a 484/485 box count as opposed to a verified 500 box count, the Board finds that appellant has established a compensable work factor. However, it still must be demonstrated by rationalized medical evidence that this factor caused or contributed to appellant's emotional condition.

In the instant case, appellant utilized eight sick days from January 24, 1997. In an October 1, 1999 medical report, Dr. Steve A. Dosh, a Board-certified internist, advised that he

[6] A claimant must establish a factual basis for a claim of harassment by supporting the allegations with probative and reliable evidence. *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

[7] *Helen P. Allen*, 47 ECAB 141 (1995).

saw appellant in January 1997 for an adjustment reaction of adulthood. He related that appellant reported a high level of stress of work which apparently was related to pressure from a supervisor who was pressuring her over her mail count, including sexist comments. There were also issues related to the quality of work as it related to delivering letters. Her supervisor apparently pressured her and would make her quite uncomfortable at work. Dr. Dosh stated that this all began in the months preceding her visit to his office and apparently took place over several months. He related that he reviewed appellant's life stressors and there was no extraordinary stresses at home, she had no history of stress-related illness and nothing on review of her history suggested any other source for her stress. Dr. Dosh stated that his recommendation was that appellant take time off work, resolve the grievances and to resume work when the grievances have been resolved and the working conditions were acceptable. He noted that the dates, as to which appellant was told to be off work and allowed to return to work, were a matter of record and the fact that she was seeing a counselor were also indicated. Counseling notes from the employing establishment's Employee Assistance Program (EAP) from February 3, 11 and 17, 1997 were also submitted.[8] Although Dr. Dosh's report and the counseling notes advised that appellant's emotional condition was due to work stress, they are not sufficient to meet appellant's burden of proof.[9] Dr. Dosh is not a specialist in the field of psychiatry and his medical report does not provide sufficient explanation for his stated diagnosis or opinion on causal relationship.

[8] As a clinical counselor and social worker do not qualify as a physician within the meaning of the Act, these notes are irrelevant. *See Jeannine E. Swanson*, 45 ECAB 325, 336 (1993); *Ceferino L. Gonzales*, 32 ECAB 1591, 1594 (1981).

[9] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995) (a claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted).

The decision of the Office of Workers' Compensation Programs dated December 7, 1999 is hereby affirmed as modified.

Dated, Washington, DC
March 28, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member