

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FELICIA ARRINGTON and U.S. POSTAL SERVICE,
POST OFFICE, Raleigh, NC

*Docket No. 99-2445; Submitted on the Record;
Issued March 28, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establish that she developed an emotional condition due to factors of her federal employment.

Appellant, a 29-year-old automation mail processor, filed a notice of occupational disease on July 8, 1997 alleging that she developed an emotional condition due to factors of her federal employment. By decision dated December 2, 1997, the Office of Workers' Compensation Programs denied appellant's claim finding that she failed to establish a compensable factor of employment. Appellant requested an oral hearing on January 2, 1998 and by decision dated May 4, 1999, the hearing representative affirmed the Office's December 2, 1997 decision.¹

The Board finds this case not in posture for decision.

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as 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.²

Appellant alleged that her supervisor, Sammy Poole, stated that he believed that appellant was using controlled substances and that this belief impacted her promotion to acting supervisor.

¹ Following the May 4, 1999 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

On August 2, 1997 Mr. Poole stated that he did accuse appellant of having a drug problem and stated that he could not allow her to be supervisor due to her mysterious absences. Mr. Poole noted that appellant stated that both her symptoms and her absences were due to her nonemployment-related condition of Graves disease. He still stated that he believed that appellant had a drug problem and that he was not going to promote her.

For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.³

In this instance, appellant has established that Mr. Poole told her that he believed that she had an illegal drug problem, that despite appellant's assertions that her absences were due to a serious personal illness, Mr. Poole continued in his assertion that he believed that she was using illegal drugs. The Board finds that these statements admitted by Mr. Poole constitute harassment.

Appellant stated that in 1996 the employing establishment began to investigate Edward McNair, appellant's boyfriend and a coworker, for stealing government checks from the employing establishment. Appellant stated that Douglas Funderberg, an employing establishment investigator, questioned her on February 29, 1996. In June 1996 Mr. Funderberg again interviewed appellant and accused her of conspiracy. She alleged that he stated that he had evidence and witnesses against appellant and that she would be arrested. Appellant stated that Mr. Funderberg photographed her at the employing establishment.

Doris Rasberry, a union steward, stated that on May 13, 1996 Mr. Funderberg stated that appellant would be arrested at the end of the investigation. The employing establishment submitted a statement from M.J. Gorbey noting that Mr. Funderberg stated, "I have evidence that you are guilty and witnesses willing to testify." He stated that appellant would not be arrested on that date but later after being indicted. Mr. Funderberg admitted to photographing appellant from the lookout gallery at the employing establishment.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.⁴ 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. In

³ *Alice M. Washington*, 46 ECAB 382 (1994).

⁴ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁵

In this case, the Board finds that the Office did not adequately develop the evidence to determine whether the employing establishment acted reasonably in the course of the investigation. The record establishes that Mr. Funderberg interviewed appellant on two occasions and that on the second occasion he stated that she would be indicted and arrested based on the testimony of witnesses and other evidence. The record does not contain any statement or documentation regarding whether the evidence against appellant actually existed or whether Mr. Funderberg was attempting to solicit an admission of guilt from appellant through intimidation. Without documentation of the evidence against appellant, in the form of the investigative report, readily available to the employing establishment, there is insufficient factual evidence for the Office and the Board to reach a conclusion regarding the issue of error or abuse on the part of the employing establishment in the manner in which Mr. Funderberg conducted the investigation.⁶

The employing establishment placed appellant on administrative leave due to this investigation. Appellant also attributed her emotional condition to the employing establishment's denial of family medical leave. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷ Appellant has submitted no evidence that the employing establishment erred or acted abusively regarding her leave requests.

Appellant felt that her job security was threatened as a result of the investigation. The Board has held that a claimant's job insecurity is not a compensable factor of employment under the Act.⁸

Appellant alleged that coworkers watched her and that management arranged for "staged" mail of checks and credit cards in order to trap her. The employing establishment denied these allegations. Appellant has not submitted any evidence in support of these allegations of harassment or error and abuse in the course of an investigation. Therefore, she has failed to substantiate that these allegations constitute factors of her employment.

In the present case, appellant has identified a compensable factor of employment, harassment or discrimination by Mr. Poole. Appellant has also submitted substantiating evidence in support of the additional factor of error or abuse in the conduct of an investigation.

⁵ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁶ *Jimmy B. Copeland*, *supra* note 4.

⁷ *Martha L. Watson*, 46 ECAB 407 (1995).

⁸ See *Artice Dotson*, 42 ECAB 754, 758 (1990).

On remand, the Office should further develop the factual evidence regarding the investigation of appellant. Thereafter, the Office should develop a statement of accepted facts and refer appellant to an appropriate physician to determine the causal relationship between her emotional condition and any accepted employment factors.

The May 4, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, DC
March 28, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member