

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE A. ZEIGLER and U.S. POSTAL SERVICE,
POST OFFICE, East Cleveland, OH

*Docket No. 00-2724; Submitted on the Record;
Issued February 11, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On July 1, 1999 appellant, a 39-year-old modified letter carrier, filed a claim for an emotional condition. She stated that she had developed anxiety, stress and depression causally related to factors of her employment.

In a narrative statement dated July 1, 1999, appellant alleged that her supervisors had engaged in a pattern of verbal abuse and harassment for the prior four or five years and referenced specific incidents which, she asserted, provided examples of this harassment.

On June 1, 1999 appellant's office manager, Theopolis Washington, approached her as she was entering the worksite through the front door and allegedly told her, "you can [no]t come [in] through this door anymore, you thought I was n[o]t here this early." Appellant stated that approximately one half hour later, she was laughing and talking with a coworker in the office when Mr. Washington shouted at her to "shut up all that noise." Appellant subsequently answered a telephone call and was told that the caller wanted to speak with Mr. Washington. She stated on the office intercom speaker system, "Mr. Washington if you are in the building, pick up on line 9621." At this time Mr. Washington was in his office with the door closed. After hearing appellant's announcement, Mr. Washington opened his door and "angrily shouted" at appellant, "You trying to be funny, huh, you trying to be funny," to which appellant responded, in a level tone, "No." Appellant stated that Mr. Washington then loudly screamed for one of his supervisors to come into his office. Appellant alleged that this incident was illustrative of Mr. Washington's inappropriate and unprofessional office behavior.

On June 2, 1999 appellant was preparing to leave for the day when she noticed one of her supervisors, Theresa Coleman "hanging around" her desk and work area. She alleged that Ms. Coleman was loitering around her work area in order to harass and intimidate her on behalf of Mr. Washington.

On June 3, 1999 appellant was summoned into Mr. Washington's office for a meeting with Ms. Coleman and two coworkers. She alleged that Mr. Washington informed them that he had received two calls saying that he was harassing someone, at which time appellant stated that she had called her union representatives. Appellant stated that the meeting had been convened for the purpose of scheduling lunch times for herself and the other two employees assigned to light duty, but that once Mr. Washington left the room, Ms. Coleman advised the three employees that Mr. Washington, "in one of his angry and irate moods" and had ordered her to contact other units to see if they have a 958 light-duty position available to which one of his employees could be transferred. Appellant stated that when she asked Ms. Coleman which one of the three employees Mr. Washington was referring to, Ms. Coleman answered, "you." Appellant alleged that this meeting exemplified how Mr. Washington was trying to remove her from her current worksite.

Appellant alleged that on June 18, 1999 she asked supervisor Kenneth Robinson to sign a 3971 leave form for an emergency appointment she had made the day before. She stated that, although she tried to justify her need to leave work at that time, Mr. Robinson refused to authorize her request for leave and became angry, stating "firmly," "Michelle, get off the clock and get off the premises, right now." Mr. Robinson began following her, repeatedly stating, "Michelle, I said get off the premises and leave the building now."

The employing establishment submitted statements from Mr. Washington, Ms. Coleman, and Mr. Robinson which rebutted appellant's allegations. In a July 2, 1999 response, Mr. Washington stated:

"[Appellant's] manager, I gave her an opportunity to act on a higher level assignment. I personally recommended her for an assignment as Coordinator of the East Area Address Management System program in which she performed adequately. I then allowed her service to be utilized in other areas performing the same function."

* * *

"Concerning my mentioning to keep the noise down [on June 1, 1999], [appellant] and another employee were laughing and talking loudly enough to be heard in our lobby by customers waiting to be serviced. Such conduct on the part of employees is unprofessional. We must maintain a professional image at all times in an effort not to be perceived by the public as being unprofessional.

"Immediately following that incident, [appellant] was in the adjacent office when the private line rang. She blurted out loudly that I had a call on the private line. After talking on the telephone, I opened the door and asked [appellant] when I was only a few feet away. I am unaware of my supervisors intimidating anyone....

"On June 3, 1999 I called all employees on Operation 958 [light-duty assignment] into my office to discuss their lunchtime and to agree on exactly how much time is to be taken for lunch.... At no time did [appellant] comment about anything

and I definitely did not ask if someone made two calls pertaining to harassment. Union Steward Theodore Wilson was present throughout the entire discussion.

“Based on [appellant’s] claim of an alleged statement by Ms. Coleman, I am unaware of being in an irate and angry mood. Regarding sending a 958 employee to another unit, I made inquiries to see who was short of CFS help for that short period of time. I suggested [appellant] could be of service to some unit in our area. She expressed to me sincerely that she would like to help at another unit if possible.... At a later time, I sent her to Station B/C where she gladly helped them with their forwarding of mail system.”

Mr. Washington reiterated that he had never acted in a disrespectful manner toward his employees and that he treated all of them, including appellant, with respect.

In a statement dated July 7, 1999, supervisor Coleman asserted that on June 3, 1999, Mr. Washington called an open discussion meeting with the rehabilitated employees regarding various personnel matters. Ms. Coleman recalled that appellant told her she thought Mr. Washington was “upset,” but Ms. Coleman did not believe was the case and that Mr. Washington merely wanted to resolve certain work-related issues. She stated that Mr. Washington did not make any threatening or detrimental comments regarding appellant and denied that appellant was being watched or set up.

Appellant submitted a witness statement from a coworker, Carolyn Britt, dated August 30, 1999. Ms. Britt stated:

“On June 1, 1999 I arrived at work at ... 7:00 a.m. and [appellant] arrived a short time after me. After she came in she asked me which door had I used when I entered the station. I replied to her that I had used the front door because one of our custodians was in the lobby cleaning and had let me in. At that point, she started to tell me that an incident [had] occurred between her and Mr. Washington because he had arrived before her and saw that she had come in the front door (which really is n[o]t supposed to be used).”

Ms. Britt stated that she could not entirely recall the conversation related to her by appellant, but that appellant was angry at Mr. Washington. As appellant and Ms. Britt had this conversation, they were standing outside of Mr. Washington’s office when he walked through the office. The telephone rang and appellant answered it. The telephone call was for Mr. Washington who was then standing just inside his office door taking off his suit jacket. Appellant got on the intercom system and said, “Mr. Washington, if you [a]re in the building you have a call on line #9552,” this was repeated twice by appellant. At that point Mr. Washington rushed out of his office to appellant and said to her “are you trying to be funny or something?” At that point Ms. Britt left the office. She also stated:

“On June 18, 1999 I sat in the office that [appellant] and I shared working on the computer. [Appellant] said to me that it was time for her to leave which was about two hours earlier than her leaving time. She went into the back office ... and spoke to Mr. Robinson. She came back visibly angry but at the time I had no

idea why. Momentarily, Mr. Robinson came to the office door and told [appellant] to keep her comments to herself. Neither [appellant] nor Mr. Robinson were yelling or speaking above a normal tone of voice. If I had not been sitting there I would have never heard their conversation. [Appellant] walked out of the office door and she said, 'I've hit back in, that's alright, I see how you are. I'll just change my appointment.' More conversation was exchanged between the two that I did not hear because they were outside the office. [Appellant] came into the office again and Mr. Robinson came in behind her and asked her to leave the premises."

Appellant submitted a July 7, 1999 report from Dr. Marilyn Vance, a clinical psychologist, who had treated appellant for emotional stress and anxiety. Dr. Vance stated:

"... I found [appellant] to be quite anxious, stressed and depressed.... Symptoms included loss of appetite, great difficulty sleeping, tension which has led to the recurrence of sever pain in her neck and shoulder and tearfulness which was observed in session. [Appellant] attributed this distress to the harassment she has been subjected to by Mr. Washington for a number of years. Two recent incidents involving Mr. Washington and [another supervisor] were so disturbing as to cause her to be unable to return to work on June 24, 1999. The severity of the symptoms and the long duration of the harassment caused me to recommend that she see a psychiatrist for an assessment for medication...."

"A diagnosis of major depression, Single Episode (296.23 DSM IV) has been made. I find her condition to be directly attributable to the manner in which she has been treated by certain supervisors at the [employing establishment].... It appears that this has been an ongoing problem that has not been seriously addressed by the employing establishment administration...."

In a statement dated October 30, 1999, Mr. Robinson gave his account of events which took place on June 18, 1999. He stated:

"... I observed [appellant] approach the timeclock with her personal items.... I asked her if she had received the [F]orm 3971 authorizing her to leave. She stated that she did not. I told [appellant] that unless she can produce an approved [F]orm 3971 as authorization she was n[ot] [permitted] to leave. I observed her [asking a coworker] to borrow her pen and [the coworker and I] observed [appellant] leaning over the desk writing on a [F]orm 3971. When she brought me the form I stated to her that the form had not been approved and instructed her that she could not leave. [Appellant] then stated in a very huffy voice that she was going anyway and hit off the clock. I instructed [appellant] that by hitting out without authorization she would be placing herself in the status of AWOL [absent without leave]. I then walked toward the computer on the [other] side of the floor, [appellant] approached me and asked me if I would approve the leave request and I stated to her that the only circumstance [under which] I could approve the leave on the same day was [that of] an emergency[,] and that she would have to bring back documentation. She then began repeating, 'Oh, I see

how you are!' in a very loud tone while walking toward the window. I went into the office and informed her that there were customers in the window area that could hear her and instructed her to lower her voice. I then reentered the office and instructed [appellant] to immediately hit off the clock and leave the building at once and report back the next day. At no time did I raise my voice at [appellant]. When I asked [her] supervisor about [the] incident he told me that [appellant] had never requested any leave from him."

In a statement dated November 1, 1999, Ms. Coleman also rebutted the allegations made by appellant. With regard to the incident of June 1, 1999 and appellant's allegation that Mr. Washington did not allow her to enter her place of employment, Ms. Coleman stated that appellant failed to state that Mr. Washington had issued verbal instructions through service talks for all employees not to use the caller/customer door to enter the building. Only employees that were issued a key for that entrance were to use that entrance with regard to the statement of "shut up all that noise" that was attributed to Mr. Washington, appellant failed to note that Mr. Washington's office was adjoined to where she worked. At this particular time, the door was open. If too much activity was going on in the outer office while Mr. Washington conducted business, he asked for the noise to be held down. With regard to the statement of "[y]ou trying to be funny," appellant had just talked to Mr. Washington and he had went into his adjacent office with the door open when appellant received the call. The tone of appellant's voice over the intercom was one of sarcasm.

With regard to appellant's allegation that Ms. Coleman was at her desk trying to harass and intimidate her on June 2, 1999, Ms. Coleman noted that the work area contained file cabinets, reference books and constituted a walkway to Mr. Washington's office. The desk appellant used was also used by other supervisors for administrative duties and contained forms used by the supervisors."

Regarding the incident of June 3, 1999 and appellant's allegation that she was ordered by Mr. Washington to transfer appellant to another unit, Ms. Coleman noted that there were two full-time rehabilitated people doing a large percentage of appellant's job assignment duties. Appellant confused two separate incidents as Mr. Washington had instructed Ms. Coleman to find a station that needed a rehabilitation position.

Mr. Washington submitted another statement dated November 3, 1999 which responded to appellant's allegation that he told her on June 1, 1999 that she was forbidden from entering her place of employment. He stated:

"I have personally told employees that when they enter the building, to use the employees' entrance that is located in the rear of the building. The security of the window clerks makes it crucial that employees use the rear entrance of the building. They are in view to the public in the front and monetary transactions are being made. Secondly the front entrance is not an employee's entrance. I was merely stating to [appellant] to use the employee's entrance as she was entering through the front door."

In a report dated November 3, 1999, Dr. Vance stated that appellant continued to believe she was being harassed at work.

In a statement received by the Office on November 8, 1999, appellant's union steward, Alfonzo T. Wilson, indicated that he did not believe appellant's complaints were credible. He stated that appellant had not filed a grievance and that her complaints toward her supervisors and Mr. Washington should be viewed in the context of her record with the employing establishment over the preceding 10 years, in which she made a "continuing chorus" of complaints against every manager at every station to which she has been assigned.

By decision dated December 28, 1999, the Office found that fact of injury was not established, as the evidence of record failed to establish that an emotional injury was sustained in the performance of duty.

By letter dated January 18, 2000, appellant requested an oral hearing, which was held on June 27, 2000.

By decision dated August 9, 2000, an Office hearing representative affirmed the Office's previous decision denying benefits. The hearing representative found that appellant failed to provide factual support for her allegations that the employing establishment had been engaged in a pattern of harassment and intimidation, or that she had implicated any specific acts of harassment or intimidation with regard to the work incidents she cited. The hearing representative therefore found that appellant did not meet her burden to establish that she sustained an emotional condition in the performance of duty.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.³ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁴

With regard to appellant's allegations of harassment, it is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁵ The Board has underscored that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable 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.⁶ The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.⁷

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that she was harassed, mistreated or treated in a discriminatory manner by his supervisors. In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination, and appellant has not submitted any evidence corroborating that she was harassed or discriminated against by the employing establishment, with regard to promotions, assignments or disciplinary actions.⁸ As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.⁹ For this reason, the Office properly determined that the alleged incidents of harassment constituted mere perceptions of appellant and were not factually established.

The Board further finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel

⁴ *Id.*

⁵ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *Norma L. Blank*, 43 ECAB 384 (1992).

⁷ *Id.*

⁸ *See Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

⁹ *See Curtis Hall*, *supra* note 5.

matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹⁰

In the instant case, appellant has presented insufficient evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. Mr. Washington's June 1, 1999 statement to appellant that she was not permitted to enter the building through the front entrance was not compensable. In his November 3, 1999 statement, Mr. Washington advised that he was merely reiterating company policy to appellant, and that all of his employees had been personally notified of this policy. This assertion was corroborated by Ms. Coleman in her November 1, 1999 statement.¹¹ Mr. Washington's order to appellant to lower her voice on June 1, 1999 did not establish error or abuse on his part; neither did his response to appellant's use of the office intercom, as Mr. Washington and Ms. Coleman indicated that appellant behaved in a manner that was sarcastic and inappropriate toward a superior. On both occasions, Mr. Washington was acting properly within his administrative capacity to exercise discipline toward appellant. Appellant has produced no evidence that Mr. Washington acted inappropriately or in an abusive manner, or that he was attempting to harass or intimidate her on these occasions.

The occurrence of other incidents cited by appellant was denied by the employing establishment, and appellant has not substantiated that such incidents occurred as alleged.¹² These included appellant's allegation that Ms. Coleman was deliberately loitering in her work area on June 2, 1999 at the behest of Mr. Washington in order to harass and intimidate her. Ms. Coleman explained that she was in the area for purposes legitimately related to her employment; specifically, that the area contains file cabinets, reference books, a desk which is used by supervisors for administrative duties and which contains forms in the drawers, and that the area provides access to Mr. Washington's office. In addition, appellant has not submitted any corroboration for her assertion that Mr. Washington confronted her about receiving calls accusing him of harassment at the June 3, 1999 meeting, nor has she provided support for her allegation that at that same meeting, Ms. Coleman indicated to appellant that she and Mr. Washington were trying to contact other work divisions in order to remove her from the worksite.

The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the

¹⁰ *Alfred Arts*, 45 ECAB 530 (1994).

¹¹ Appellant's coworker, Ms. Britt, indicated in her August 30, 1999 statement that she told appellant she had used the front entrance on June 1, 1999 because a custodian was in the lobby cleaning when she arrived and had allowed her to enter. This statement, however, does not explain or excuse appellant's attempt to use the front entrance on June 1, 1999. Mr. Washington and Ms. Coleman unequivocally stated that all employees were aware of the policy forbidding employees from using the front entrance; the fact that Ms. Britt may have skirted the policy on one occasion does not condone appellant's attempt to do the same.

¹² To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his allegations with probative reliable evidence. *Ruthie M. Evans*, 41 ECAB 416 (1990).

regular or specially assigned duties the employee was hired to perform.¹³ However, error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.¹⁴ In the present case, there is no evidence of record to substantiate appellant's allegation that Mr. Robinson unfairly and arbitrarily denied her permission to use leave on June 18, 1999 and that he subsequently harassed her and asked her to leave the worksite without cause. Mr. Robinson refuted appellant's allegations, stating that she refused to adhere to the employing establishment's policy mandating that employees submit a leave request with a form approved by a supervisor, supported by documentation and that he was merely enforcing this policy.¹⁵ In addition, the evidence of record indicates that he was not acting in an unreasonable manner by ordering appellant to leave the company premises, as her unruly behavior required him to exercise his disciplinary authority. Appellant has produced no evidence that Mr. Robinson acted unreasonably or committed error in discharging his administrative duties during this incident.

Accordingly, a reaction to such factors did not constitute an injury arising within performance of duty. The Office properly concluded that in the absence of agency error such personnel matters were not compensable factors of employment.

The decision of the Office of Workers' Compensation Programs dated August 9, 2000 is hereby affirmed.

Dated, Washington, DC
February 11, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹⁴ *Margreate Lublin*, 44 ECAB 945 (1993).

¹⁵ *Drew A. Weismuller*, 43 ECAB 745 (1992); *Kathi A. Scarnato*, 43 ECAB 220 (1991).