U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDY M. LANGNESE and U.S. POSTAL SERVICE,
POST OFFICE, Portland, OR

Docket No. 01-1360; Submitted on the Record;
Issued February 1, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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 24, 2000 appellant, then a 51-year-old letter carrier filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that the previous work injuries to her wrist and hands[1] resulted in chronic pain and limitations on her physical activities which resulted in anxiety attacks and severe depression. She stopped working on October 12, 2000 and did not return.

Accompanying appellant's claim were treatment notes from Dr. Victor Breen, a family practitioner, dated May 5 to November 16, 2000; and a report from Dr. Donald Lange, a specialist in psychiatry, dated November 2, 2000. The treatment notes from Dr. Breen dated May 5 to December 1, 2000 diagnosed appellant with carpal tunnel syndrome. His October 13, 2000 treatment note indicated that appellant was experiencing problems performing her job duties because her hands were not functioning properly and were painful. Dr. Breen diagnosed appellant with depression. His October 27, 2000 report noted appellant's concerns of returning to her full-time position and not being accommodated for her disability. Dr. Breen set forth modified-duty restrictions upon appellant's return to work. His November 16, 2000 note indicated that appellant was being treated for carpal tunnel syndrome and depression. Dr. Breen's December 1, 2000 note indicated that appellant was still experiencing symptoms of depression as a result of the stress at her workplace. He noted appellant was released to modified work; however, the employing establishment would not accommodate appellant and provide her with light duty. Dr. Lange's report of November 2, 2000 diagnosed appellant with depressive disorder. He noted that appellant requested Dr. Breen to return her to work in May 1999 without

[1] The following claimed injuries were accepted by the Office of Workers' Compensation Programs in claim number A14-324511: bilateral wrist tendonitis and carpal tunnel release surgery. The records for these other claims are not currently before the Board.

restriction; however, appellant still wanted to be viewed as having restrictions and therefore accommodated for these restrictions. Dr. Lange noted appellant's emotional difficulties were related to her physical condition and job performance.

Appellant submitted a statement dated October 31, 2000 indicating that she experienced pressure at work to perform her duties especially during the mail counts. She noted that she experienced pain as a result of her wrist tendinitis and that this condition would not allow her to function at work at the level she previously could. Appellant indicated that her physical condition and job performance has caused her great stress and affected her ability to concentrate, think and sleep.[2]

In a November 1, 2000 letter, appellant's supervisor noted appellant's employment duties and indicated that appellant was released to full duty after undergoing carpal tunnel release in August 2000.

In a letter dated December 11, 2000, the Office advised appellant that the evidence submitted in support of her claim was insufficient to establish her claim. The Office advised appellant of the type of evidence needed to establish her claim and requested she submit such evidence.

In a letter dated December 21, 2000, appellant's supervisor noted appellant had been periodically off work the past three years for her accepted bilateral wrist tendonitis and bilateral carpal tunnel release. She noted that on August 25, 2000 appellant submitted medical documentation indicating that she was fit for regular full-time duty. The supervisor indicated that on October 13, 2000 appellant notified her that she could not perform the duties of her job due to the stress of the rural count. Appellant further stated that she did not feel as though she could work because her hands hurt. The supervisor indicated that appellant was accommodated in the past by allowing her time off when her hands were aggravated from her job; was given additional days to deliver her mail when heavy loads arrived; and was allowed time off following holidays so the workload would not strain her hands. The supervisor noted that appellant was able to perform her duties as a rural mail carrier.

Thereafter, appellant submitted treatment notes from Dr. Breen dated October 18, 2000 to February 8, 2001. Dr. Breen's October 18, 2000 report noted appellant was unable to perform her job. He diagnosed appellant with depression which was a result of not being able to perform her job at the employing establishment because of her carpal tunnel syndrome. Dr. Breen noted appellant was working in a hostile environment, one that would not accommodate the physical pain that she was continuously experiencing. His January 5, 2001 treatment note indicated that appellant was experiencing pain in the wrists with tingling and numbness. Dr. Breen noted tenderness over the flexor tendon and diagnosed appellant with carpal tunnel syndrome. He noted that one of the factors that lead to appellant's depression was the stressful work situation.

On December 31, 2000 appellant notified the employing establishment that her medical restrictions were not being accommodated and requested to be reassigned to a physically appropriate position.

[2] Appellant's statement is not numbered, however, it is found after page 13 in the record.

Appellant submitted a statement which raised the following allegations: (1) she was pressured and harassed by her supervisors because she was not working fast enough; (2) she was pressured and harassed by her supervisors because she was taking too long to perform her duties and load her mail; (3) she was required to undergo a mail count; (4) appellant's supervisor harassed her with derogatory statements, telephoning her regarding upcoming route vacancies and indicating with sarcasm that he was sick and could not work; (5) the postmaster did not give appellant credit for all accountable mail; (6) the postmaster made harassing statements to appellant regarding not walking quick enough; (7) she was denied reimbursement for sick leave; (8) she was required to work over nine hours a day outside of her limited-duty restrictions; and (9) she was promised another job within her restrictions which never came to fruition.

The employing establishment submitted a statement from appellant's supervisor and postmaster dated February 23, 2001 which indicated that appellant was not pressured to perform her duties. They noted that in the three months prior to her mail count in October appellant worked 7.85 hours and was compensated for 8.8 hours of work. It was also noted that if appellant was not able to perform her mail count, management would have assisted her in this duty. The mail count was conducted in September when appellant's doctor released her to full duty. The supervisor noted that he contacted appellant regarding upcoming route vacancies in an effort to assist her as these routes were smaller than appellant's current route. The supervisor did not recall making derogatory statements to appellant. The postmaster indicated that appellant received credit for all accountable mail she signed and delivered and appellant never indicated that there were problems with the entries. The postmaster indicated that she did make a comment to appellant regarding the time it took her to load her vehicle and noted appellant was walking much slower than her demonstrated performance in the past. She noted that appellant was permitted to make three trips to load her vehicle instead of the two needed by other employees. The postmaster further noted that accommodations for appellant's hand were made when she required additional assistance and it was noted that she was limited in her lifting ability.

By decision dated March 8, 2000, the Office denied appellant's claim for compensation on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

The Board finds that this case is 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 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 his 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.[3] On the other hand, the disability is not covered where it results from such factors as an

[3] 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[5] 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.[6]

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.[7] 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.[8]

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated March 8, 2001, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged harassment on the part of her supervisors. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[9] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[10] In the present case, appellant's supervisors indicated that she was not pressured to perform her duties. He noted that in the three months prior to her mail count in October

[4] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

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

[10] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

appellant worked 7.85 hours and was compensated for 8.8 hours of work. Appellant's supervisor also noted that if appellant was not able to perform her mail count, management would have assisted her in this duty. Furthermore, the supervisor noted the mail count was conducted in September 2000 when appellant's doctor released her to full duty. The employing establishment admitted that the postmaster did comment on the time it took appellant to load her vehicle and noted appellant was walking much slower than her demonstrated performance in the past. The postmaster further noted that accommodations for appellant's hand were made when she required additional assistance and in this instance, appellant was permitted to make three trips to load her vehicle instead of the two needed by other employees. The employing establishment indicated that appellant's supervisor contacted appellant regarding upcoming route vacancies; but he did not indicate that he was sick and could not work. General allegations of harassment are not sufficient[11] and appellant has not detailed specific instances of harassment. Appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.[12] Appellant alleged that her supervisor made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[13] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen,*[14] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: appellant's

[11] S*ee Paul Trotman-Hall,* 45 ECAB 229 (1993).

[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).

[13] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[14] *See Thomas D. McEuen*, *supra* note 4.

requirement to undergo a mail count;[15] the postmaster not giving appellant credit for all accountable mail;[16] appellant being denied reimbursement for sick leave;[17] appellant being required to work over nine hours a day outside of her limited-duty restrictions;[18] appellant being promised another job within her restrictions.[19] The employing establishment has either denied these allegations or contended that it acted reasonably in these administrative matters. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus she has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant has also attributed her emotional condition to chronic pain and limitations resulting from her prior employment injuries.[20] This could be a compensable employment factor.[21] However, the Board notes that the record regarding the other employment injuries is not before the Board on the present appeal. As the Office did not develop this aspect of the claim with appellant's prior claims, the Board will remand the case to the Office for consideration of this aspect of the case to be followed by a *de novo* decision on the merits of the claim.

[15] *See John Polito*, 50 ECAB 347 (1999) (although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. Appellant did not submit evidence supporting his claims that the employing establishment committed error or abuse in monitoring work activities such that he did not establish a compensable employment factor).

[16] *See Marguerite J. Toland*, 52 ECAB ___ (Docket No. 99-1989, issued March 9, 2001) (an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse).

[17] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988) (the Board finds that allegations such as wrongly denied leave and improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act).

[18] *Id.*

[19] *Donald W. Bottles*, 40 ECAB 349, 353 (1988) (the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position).

[20] See appellant's statement dated October 31, 2000. The statement does not have a record number but can be found after page 13 in the record.

[21] *See Clara T. Norga*, 46 ECAB 473 (1995) (an emotional condition due to chronic pain and other limitations resulting from an employment injury is covered under the Act).

The decision of the Office of Workers' Compensation Programs dated March 8, 2001 is affirmed in part and set aside and remanded in part for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
February 1, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member