

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE C. HAMPTON-GRAY and U.S. POSTAL SERVICE,
IRVINE MAIN POST OFFICE, Irvine, CA

*Docket No. 00-1105; Submitted on the Record;
Issued July 29, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition while in the performance of her duties.

On November 21, 1997 appellant, then a 42-year-old distribution window clerk, filed an occupational disease claim certifying that her severe chest pains, headaches and stress were a result of her federal employment. She asserted that her supervisor had sexually harassed her and had created a hostile work environment. Appellant alleged that, on August 29, 1997 when she asked whether the supervisor needed her to work the following week, the supervisor looked at her very seductively and replied with a sexual comment under his breath. She also implicated the treatment she received in a meeting that was held on November 20, 1997 during which she underwent what she described as a surprise intensive interrogation. Appellant fleshed out her complaint in supporting statements and in response to requests for additional information.

In a December 22, 1997 statement, appellant's supervisor denied engaging in any type of sexual misconduct or making any sexual comments. He asserted that appellant's charges were false and incorrect.

A witness to the November 20, 1997 meeting stated that, in his opinion, appellant was not harassed or interrogated in any way.

On December 23, 1997 the employing establishment addressed appellant's allegations and denied any mistreatment.

The Office of Workers' Compensation Programs developed the factual evidence further, obtaining additional statements from the parties involved.

Appellant submitted medical evidence to support her claim. Her attending physician, Dr. Philip M. Carman, a licensed clinical psychologist, diagnosed major depression and post-traumatic stress disorder. Dr. Carman attributed appellant's disability in 1999 to flashbacks

of a traumatic injury she suffered nearly 10 years earlier when an employee assaulted her in the presence of a supervisor. He also attributed appellant's disability to her belief that she was being treated in a hostile manner in retaliation for pressing sexual harassment charges.

In a decision dated June 25, 1998, the Office denied appellant's claim on the grounds that the medical evidence failed to show that her current condition was related to her federal employment. In a memorandum dated June 24, 1998, the claims examiner reviewed the factual evidence in depth and found that appellant had established several compensable factors of employment, all associated with performing her assigned duties. He further found that none of the allegations and incidents cited as examples of sexual harassment or inappropriate or abusive conduct on the part of the employing establishment supported that appellant was in fact harassed or abused.

Appellant requested an oral hearing before an Office hearing representative and expressed her disagreement with the June 25, 1998 decision.

In a decision dated March 26, 1999, the Office hearing representative affirmed the denial of appellant's claim. The hearing representative found that the factors identified by appellant as having caused or contributed to her emotional condition -- via her testimony and January 12, 1999 statement -- were not compensable factors of employment. The hearing representative further found that the medical evidence failed to support that appellant experienced an exacerbation of her emotional condition due to incidents that occurred at work in 1997. The medical evidence made clear that appellant's ongoing emotional problems were related to factors that transpired years previously. While the medical evidence discussed in great detail incidents that occurred back in 1990 and 1991, these matters were the subject of another claim and not strictly relevant to the claim appellant filed in 1997. The hearing representative also explained that incidents occurring after appellant's November 21, 1997 claim were irrelevant.

Appellant expressed her disagreement with the hearing representative's decision and argued she did not receive a fair hearing. On June 9, 1999 she requested reconsideration.

In a decision dated August 24, 1999, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

Appellant again requested reconsideration.

In a decision dated October 7, 1999, the Office denied a merit review of appellant's claim.

Appellant again expressed her disagreement with the Office's decision. She alleged it was apparent that the processing of her case was a personal attack on her. Appellant again requested reconsideration. In support thereof, she submitted a July 20, 1999 letter from Ms. Mastel, customer service manager, to Leonard F. Trujillo, American Postal Workers' Union vice president, regarding a grievance appellant filed:

"On July 19, 1999 we discussed the above-captioned grievance, regarding [appellant]. This grievance was remanded from Step 3 to be resolved in accordance with the findings of [the Office]."

“The record shows that the grievant had been cleared to return to work for four hours per day on May 18, 1998 by her treating physician, Dr. Carman. The record also shows that the grievant did not return to work until June 11, 1998. Based on the findings of [the Office] the grievant should’ve been allowed to return to work on May 18, 1999 (sic). In a memorandum to the Director of the U.S. Department of Labor dated June 2, 1998, regarding an eight-hour job offer, Claims Examiner John R. Flaherty states that ‘... the offered job ... does not meet the physical restrictions of the claimant’s treating physician and is not a suitable job offer.’

“Management and the Union agree that the 68 hours of annual and sick leave used between May 18 and June 10, 1998 will be charged to administrative leave.

“Based on the above, this grievance is settled.”

Ms. Mastel signed the letter and sent copies to several officials at the employing establishment.

In a decision dated October 22, 1999, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that appellant’s allegations were not compensable or were not established as factual. The Office found that the grievance pertaining to leave used from May 18 through June 10, 1998 was settled and that a settlement is no evidence of error or abuse.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of her duties.

A claimant seeking compensation under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty and that her disability for work, if any, was causally related to the employment injury.³

Workers’ compensation law does not cover each and every injury or illness that is somehow related to an employee’s employment.⁴ An employee’s emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,⁵ neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;⁶ investigations;⁷ determinations concerning promotions and the work environment;⁸

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989); *see Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁶ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

discussions about an SF-171;⁹ reassignment and subsequent denial of requests for transfer;¹⁰ discussion about the employee's relationship with other supervisors;¹¹ or the monitoring of work by a supervisor.¹²

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.¹³ Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.¹⁴

Appellant's emotional reaction to the actions of her supervisor lies, as a general matter, outside the scope of coverage of workers' compensation. To establish a compensable factor of employment, appellant must do more than allege harassment or abuse. She must substantiate her allegations with probative and reliable evidence. The employing establishment submitted evidence rebutting appellant's accusations and perception of events. In nearly every instance, the factual evidence developed in this case either fails to establish that the incident occurred as appellant described it or failed to demonstrate error or abuse by the employing establishment in an administrative matter.

Appellant pursued her allegations through the Equal Employment Opportunity Commission and grievance procedure, yet her efforts have failed to produce a final decision or finding upholding her complaints. In one of her grievances, however, appellant obtained a letter that demonstrates an error by the employing establishment.

The Board finds that the July 20, 1999 letter from Ms. Mastel, changing 68 hours of annual and sick leave to administrative leave, is sufficient evidence of error on the part of the employing establishment in an administrative matter to establish a compensable factor of employment. Although Ms. Mastel stated that "this grievance is settled," the letter presents none of the overt indicia of a settlement. Typically, settlements require the signatures of both parties in formal fashion. Also, there typically is a provision that, by agreeing to the settlement, neither party admits wrongdoing. In this case, the July 20, 1999 letter shows corrective action by the

⁷ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁸ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

⁹ *Lorna R. Strong*, 45 ECAB 470 (1994).

¹⁰ *James W. Griffin*, 45 ECAB 774 (1994).

¹¹ *Raul Campbell*, 45 ECAB 869 (1994).

¹² *Daryl R. Davis*, 45 ECAB 907 (1994).

¹³ *Margreate Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 42 ECAB 566 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

¹⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

employing establishment to convert annual and sick leave to administrative leave because appellant should have been allowed to return to work. As this shows error in an administrative matter, appellant has established a compensable factor of employment. The Board will modify the Office's October 22, 1999 decision accordingly.

In its June 24, 1998 memorandum, the Office reviewed the factual evidence in depth and found that appellant had established several compensable factors of employment. The Board agrees with the Office's analysis in that the performance of one's assigned duties clearly falls within the course of employment, whether it be witnessing a reprimand in her capacity as a union representative or correcting W's or receiving telephone calls from coworkers about work problems. Appellant, however, is not attributing her emotional condition to the performance of these duties *per se* but to what she perceives to be the unreasonable conduct or motivations of others. The Board finds that appellant's perception of harassment or abuse or unreasonable conduct is unsubstantiated by the weight of the evidence.

Having established one compensable factor of employment, appellant must submit evidence that this factor caused or contributed to her diagnosed psychological condition. Causal relationship is a medical issue,¹⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established factor of employment. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor established by the claimant.¹⁶

To support her claim, appellant submitted reports from her attending clinical psychologist, Dr. Carman. While Dr. Carman supports a connection between appellant's federal employment and her diagnosed condition, his reports are of diminished probative value because they are largely founded on perceptions that are not accepted as factual and on factors that do not fall within the scope of workers' compensation.¹⁷ For the purpose of determining appellant's entitlement to compensation, the question is not whether she is convinced that she was sexually harassed by her supervisor or that there was a vendetta carried out against her or that she was otherwise mistreated at work. The question is whether the charging of 68 hours of annual and sick leave between May 18 and June 10, 1998, when appellant was cleared to return to work for four hours per day, caused or contributed to her major depression or post-traumatic stress disorder, and if so, the psychological nature of that relationship. Without a probative medical opinion on this issue, supported with sound psychological reasoning, the evidence in this case fails to establish the essential element of causal relationship. Because appellant has not met her burden of proof, the Board will affirm the Office's October 22, 1999 decision as modified.

¹⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁶ *See Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁷ *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

The October 22, 1999 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Dated, Washington, DC
July 29, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member