

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURIE A. WALTER and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

*Docket No. 02-914; Submitted on the Record;
Issued September 26, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On October 9, 2000 appellant, then a 43-year-old clerk, filed an occupational disease claim alleging that she sustained an aggravation of post-traumatic stress disorder causally related to factors of her federal employment. Appellant stopped work on August 15, 2000.

By decision dated April 18, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office determined that appellant had not established any compensable factors of employment. In a decision dated January 31, 2002, a hearing representative affirmed the Office's April 18, 2001 decision.

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

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.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 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.²

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 employment factors.³ 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.⁴

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.⁵ 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.⁶

Appellant primarily attributed the aggravation of her post-traumatic stress disorder⁷ to harassment at work. Appellant related that after she joined a class action against the employing establishment to protest the use of black face balloons in October 1999, appellant had experienced "repeated acts of harassment in late February and March, 2000" and began having nightmares and trouble sleeping. She stated, "On August 8, 2000 I was threatened by my supervisor and I became so disturbed that I had to take off work."

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ However, for harassment or discrimination to give rise to a compensable disability under the 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.⁹

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ Appellant was sexually assaulted while in the military in 1976.

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

In this case, appellant has generally alleged that she experienced repeated instances of harassment in February and March 2000, but provided no supporting details; thus, the evidence is insufficient to establish harassment or discrimination based on her joining in a complaint against the employing establishment.

Regarding appellant's allegation that her supervisor, Philip D. Renner, stalked and threatened appellant on August 8, 2000 she related that Mr. Renner followed her everywhere that day looking at her with hatred. Appellant stated that coworkers began questioning why he was following her and that she became uncomfortable. Appellant stated:

"I said, 'Mr. Renner is there a reason that you [are] following me around all night?' He just scowled at me. So I asked him if it was something to do with the clothes I was wearing ... again he scowled but this time he said 'turn around and walk.' I was a little unnerved at this point so I did turn around and began walking toward the Manual Letter Section and Mr. Renner once again was right behind me. I stopped and said to Mr. Renner, 'I think you have a problem.' He looked at me very hatefully and said "You [are] the problem and I [am] goin[g] [to] take care of you tomorrow. This statement did scare me [and] I said, 'That sounds like a threat.' Mr. Renner nodded his head almost in agreement [and] again said, 'I [will] take care of you tomorrow.'"

Appellant related that she told Mr. Renner that she did not like to be stalked and requested a union steward.

In a statement dated August 10, 2000, a coworker related that she observed Mr. Renner following appellant when she took a break with her and that she later heard appellant say that she did not like to be stalked. In an undated statement, Gladys Young, a coworker, related that appellant asked Mr. Renner why he was following her and whether there was a problem to which he replied that "she was the one who had a problem." Ms. Young related, "[Appellant] told Mr. Renner that she was uncomfortable with his conduct and turned to leave. Mr. Renner again followed behind her."

In a statement dated August 10, 2000, Larry Meissner, a coworker, related that on August 8, 2000 he "heard loud voices and turned around. [Appellant] and [Mr. Renner] were in a not so pleasant discussion. Evidently [Mr. Renner] had been following her because she was saying in essence I do not appreciate your following me. Phil told her to go to her work area. She said she was going to her work area. Then she gave him notice that she needed to see a union steward."

In a statement dated August 8, 2000, Teri Love, a coworker, related that Mr. Renner followed appellant throughout the evening. Ms. Love related that when appellant asked whether there was a problem, Mr. Renner told her that she was the problem and that he would take care of her tomorrow. Ms. Love stated, "Mr. Renner, in my opinion, was threatening [appellant] when all she had done was ask him why he seemed fascinated by her backside."

In a statement dated August 24, 2000, Mr. Renner related that he observed appellant leave her workstation several times without authorization and that after Mr. Renner located her

he followed her to make sure that she returned to work. Mr. Renner stated that he found appellant in the union office on her last absence from her workstation and instructed her to return to work. Mr. Renner stated:

“I observed for about half a minute and then I approached and once again instructed [appellant] to return to her work area. [Appellant] began to walk toward her work area but turned back to ask, ‘What [is] your problem?’ I stated, ‘I do [not] have one but you need to return to your work area now. I will take corrective action if you do [not].’”

In this case, appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.¹⁰ Appellant’s witness statements support that Mr. Renner followed her on the evening in question but not that he harassed her or acted improperly. Mr. Renner explained that he followed her in order to make sure that she returned to her workstation as instructed. An employee’s complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage of the Act.¹¹ This principle recognizes that a supervisor or manager, in general, must be allowed to perform their 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 compensable absent evidence of error or abuse.¹² In this case, appellant has not submitted sufficient evidence of error or abuse to substantiate that her supervisor acted unreasonably by following her to make sure she returned to her work area.

Appellant contended that Mr. Renner threatened her by stating that he was going to “take care of her” the next day. The Board has recognized the compensability of verbal altercations or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹³ In this case, appellant has not shown how the isolated comment made by Mr. Renner would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment or verbal abuse.

¹⁰ 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).

¹¹ *Christophe Jolicoeur*, 49 ECAB 553 (1998).

¹² *Id.*

¹³ See *Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

¹⁴ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee’s reaction to coworkers’ comments such as “you might be able to do something useful” and “here he comes” was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor’s calling an employee by the epithet “ape” was a compensable employment factor).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁵

The January 31, 2002 and April 18, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 26, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).