

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANIS L. PARKER and U.S. POSTAL SERVICE,  
PROCESSING & DELIVERY CENTER, St. Petersburg, FL

*Docket No. 03-1056; Submitted on the Record;  
Issued December 1, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

Appellant, a 50-year-old manager of transportation networks, filed a notice of occupational disease on January 18, 2001 alleging that she developed panic attacks, anxiety and major depression due to factors of her federal employment. The Office of Workers' Compensation Programs requested additional factual and medical evidence by letter dated March 28, 2001. By decision dated February 1, 2001, the Office found that appellant had failed to substantiate a compensable factor of employment.

Appellant requested an oral hearing on March 6, 2002. Appellant and her attending physician, Dr. Gerard E. Boutin, a clinical psychologist, testified at the oral hearing on October 24, 2002. By decision dated January 15, 2003, the hearing representative denied appellant's claim finding that she had not established that her emotional condition was due to an accepted factor of employment.

The Board finds that the case is not in posture for a 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.<sup>1</sup>

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

Appellant attributed her emotional condition to the requirement that she discipline an employee, Al McDaniels, on several occasions during 1998. She submitted copies of the disciplinary actions. She stated that, as a result of the disciplinary action, Mr. McDaniels filed several Equal Employment Opportunity (EEO) complaints against her alleging that she was discriminating against him based on race. Appellant submitted a response to one of Mr. McDaniels' EEO complaints. Appellant stated that Mr. McDaniels also challenged the job assignments that she made. Appellant stated that Mr. McDaniels and his EEO complaints disrupted the transportation department and that he retired with a diagnosis of schizophrenia. Appellant attributed her condition to the requirement that she testify in January 2000 in New York before an arbitrator as a consequence of her decision not to hire a driver due to his accident record. She also submitted a copy of the arbitrator's decision which upheld appellant's denial of a request for transfer for an employee. In February 2000 appellant had to terminate a driver, James Carter. Appellant submitted copies of Mr. Carter's discipline.

In a statement dated February 7, 2001, Chuck Gunn, the manager of in-plant support, stated that appellant had to manage 3 supervisors and 26 drivers. He stated that Mr. McDaniels was one of appellant's operational supervisors, that appellant took disciplinary action against Mr. McDaniels and that he consequentially filed an EEO claim against appellant. Mr. Gunn stated that these actions were part of appellant's job. He further stated that appellant appropriately placed Mr. Carter on emergency suspension for falsifying an on-the-job injury claim.

In a statement dated August 23, 2001, Steve Dodge, manager of distribution operation, stated that appellant had difficulties with Mr. McDaniels. On December 6, 2002 John Hoyle, the current plant manager, stated that appellant's job requirements included managing a small group of supervisor and support staff involved in transportation issues.

Appellant submitted two witness' statements from Martha Shoro, a coworker and office mate who stated that taking disciplinary action against employees was upsetting for appellant. Frank Ramos, a supervisor of transportation and one of appellant's subordinates, completed a statement on January 12, 2000 describing appellant's observed difficulties. He stated that appellant was ill during the scheduled arbitration trip to New York in January 2000 and that he had to cancel the return trip due to appellant's worsening condition.

The Board finds that appellant has established that she was required to supervise employees as part of her job duties and that this included administering discipline against Mr. McDaniels and Mr. Carter. Appellant has also established that she was required to attend an arbitration hearing in New York regarding her decision not to hire a driver,<sup>2</sup> and that as part of her employment duties she had to respond to EEO complaints filed by Mr. McDaniels.<sup>3</sup>

In addition, appellant attributed her emotional condition to actions of her supervisor, Danny Rodriguez, plant manager, who she felt attempted to preselect candidates for planned openings as well as his alleged reaction to appellant's refusal to cooperate with his agenda

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<sup>2</sup> *George Patrick Semonco*, 50 ECAB 552, 556 (1999).

<sup>3</sup> *Isabel R. Pumpido*, 51 ECAB 326, 329 (2000).

including forcing appellant from her position. Appellant asserted that Mr. Rodriguez suggested appellant for an officer-in-charge detail, a promotion on November 12, 1999 and stated that he would place Jeff McKinney, one of appellant's subordinates and a friend of Mr. Rodriguez, in her position. Appellant declined to pursue this option the next day, which she alleged upset Mr. Rodriguez. She stated that Mr. Rodriguez then began to shun her, refusing to greet her and appearing short with her in meetings. Appellant stated that Mr. Rodriguez did not support her and was verbally abusive. Appellant noted that Mr. McKinney received her position when she retired.

In support of her claim, appellant submitted a statement from Ruth D. Johnson, manager of EEO complaints processing at the employing establishment. Ms. Johnson stated that in October 2000 she spoke to John Patrick, an employee at the vehicle maintenance facility, who informed her that Mr. McKinney was going to get the manager of transportation job and that Marilyn Young would assume Mr. McKinney's position and that Tammy Kinkosky would move into Ms. Young's position. Ms. Johnson stated that her office received several EEO complaints regarding Mr. McKinney's promotion.

Appellant's husband, Theodore Beaumier, the manager of maintenance at the employing establishment, stated that Mr. Rodriguez asked appellant to vacate her position and take an officer-in-charge position at another post office. He stated that appellant declined this transfer and that on February 1, 2000 Mr. Rodriguez repeated his plan to move appellant and replace her with Mr. McKinney, followed by a chain of promotions.

In a statement dated March 21, 2002, Mr. Ramos alleged that Mr. Rodriguez wanted to promote those within his clique and that he attempted to find appellant employment elsewhere in order to advance Mr. McKinney. On October 21, 2002 Mr. Ramos repeated his allegations noting that, in order to promote his circle of friends, Mr. Rodriguez had to move appellant or force her out. Mr. Ramos filed an EEO complaint regarding his failure to receive the promotion granted Mr. McKinney.

Mr. Dodge, in his August 23, 2001 statement, asserted that Mr. Rodriguez was fair and did not cause appellant undue stress. Mr. Hoyle stated that plant managers were allowed to develop plans to deal with forecasting, anticipating the movement of people through the organization due to retirement, promotion and transfers. He stated that appellant was developed for advancement as were Mr. McKinney, Ms. Young and Ms. Kinkosky. Mr. Hoyle stated that Mr. Rodriguez planned a succession of temporary assignments to backfill the higher level forecasted absence. He stated that forecasting was encouraged while preselection of candidates for promotion was a violation of employing establishment policies. Mr. Hoyle stated that Mr. McKinney was selected to fill appellant's position as he was the best qualified candidate. He also stated that Mr. Rodriguez did not force appellant from her position.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation 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.<sup>4</sup> The Board finds that appellant has not submitted sufficient corroborative evidence to establish that the employing establishment through Mr. Rodriguez acted unreasonably in offering to assist appellant in obtaining a promotion and in forecasting which employees should be detailed should her promotion materialize. Therefore she has not established error or abuse in this action.

Appellant stated that she applied for a promotion to postmaster in March 1999 and did not receive an interview. Appellant alleged that she attempted to request sick leave prior to the scheduled arbitration and that Mr. Rodriguez yelled at her and told her that his employees had never missed a scheduled arbitration and that the practice was not going to begin. Regarding appellant's allegations that the employing establishment wrongly addressed leave and denied her request for a promotion interview, the Board finds that, these allegations related 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.<sup>5</sup>

Appellant also alleged that Mr. Rodriguez harassed her and discriminated against her by refusing to speak to her and shunning her effectively forcing her from her position. 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. 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.<sup>6</sup> Appellant has failed to submit the necessary factual evidence to establish harassment or discrimination on the part of Mr. Rodriguez.

In the present case, appellant has identified compensable employment factors regarding the discipline that she was required to administer, responses to EEO complaints and testifying at an arbitration. As appellant has implicated compensable employment factors, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.<sup>7</sup> After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

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<sup>4</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>5</sup> 5 U.S.C. §§ 8101-8193; see *Ernest St .Pierre*, 51 ECAB 623 625, (2000); *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).

<sup>6</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>7</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

The January 15, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC  
December 1, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member