U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARLENE RUSHING and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY

Docket No. 02-1581; Submitted on the Record;
Issued January 23, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

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

On October 16, 2000 appellant, then a 39-year-old custodian, filed a notice of traumatic injury alleging that she suffered from job-related stress due to an incident that occurred at work on September 25, 2000. Appellant noted that she had stopped work on September 26, 2000.

Appellant related that, on the night of September 25, 2000, she discovered that she was assigned to work on a floor where there was a high level of noise, even though her supervisor was aware that loud noise caused her anxiety and panic.[1] She questioned her supervisor regarding the assignment, but was ignored, and filed a complaint with the Equal Employment Opportunity (EEO) office for disability discrimination. The supervisor handed appellant a time punch card and she left the work area. On her way out of the work area, appellant ran into a coworker who agreed to change shifts with her. Appellant started working her assignment but developed a severe headache and decided it was best to go home. She went to the cafeteria and handed a leave slip to her supervisor and alleged that he stated in a very loud voice as he read the leave slip, "work-related stress." Appellant stated that she left work and was treated for high blood pressure at the emergency room later that same day.

Appellant related that she reported to work on September 27, 2000 and was again assigned to work the same noisy floor. After speaking with a union steward, appellant prepared to start work but was questioned by her supervisor as to whether she would be filing a workers'

[1] Appellant has a long history of post-traumatic stress disorder, recurrent depression and suicidal attempts beginning in early childhood and stemming from several traumatic events. In November 20, 1995 report, Dr. J. Roosevelt Clerisme, a Board-certified psychiatrist, advised that appellant had been under treatment beginning in 1986. Dr. Clerisme noted that appellant felt more anxious working in a noisy environment and should be placed on light duty in a quiet work space. He suspected that appellant suffered from borderline personality disorder and prescribed medicine and psychotherapy.

compensation claim for stress. She alleged that the supervisor badgered her about documentation for the claim. Appellant then went to the smoking area with a coworker. Her supervisor apparently told her that he was taking her off the clock for the time spent smoking before she began her work duties. Appellant alleges that she went to the roof where she felt like jumping off and had to be brought down by the police. She was transported to the hospital for psychiatric care and remained in the hospital until October 10, 2000.

The record contains copies of two postal inspection incident reports for September 25, 2000. One report confirmed that police were called to render first aide to appellant on September 26, 2000 for high blood pressure and that they were again called on September 27, 2000 when appellant was sitting on the roof of her duty station and threatening to jump off.

In a statement dated September 25, 2000, appellant's supervisor, Joseph F. Iulo, Jr., noted that appellant handed him a leave slip on September 25, 2000 in the cafeteria, which he read aloud, noting "work-related stress." Mr. Iulo noted that appellant left the cafeteria before he had the chance to ask her how he could help her. He went to find her and waited outside the ladies locker room. Mr. Iulo stated that he asked her how he could help her with her problem but she walked past him and out the front door.

. The employing establishment submitted a copy of an arbitration agreement dated July 21, 2000, indicating that appellant had been improperly removed from her job for excessive absenteeism. Appellant was placed on a two-year probation, requiring that she promptly document all future absences from work and demonstrate satisfactory attendance in order to keep her job with the employing establishment. The employing establishment contends that it was unable to accommodate appellant's work restrictions on either September 25 or 26, 2000 and that it was under no obligation to provide appellant with light duty since her psychiatric condition was preexisting and nonwork related.

Appellant submitted two attending physician's report dated March 23 and April 16, 2001 signed by Dr. Rizalna Fernandez, a Board-certified psychiatrist, who diagnosed post-traumatic stress disorder and high blood pressure due to a noisy work assignment and harassment by appellant's supervisor. The date of injury was listed as September 25, 2000.

In a November 15, 2000 letter, the Office of Workers' Compensation Programs notified appellant that her claim was being treated as one for an occupational disease since she alleged work incidents that occurred over the course of two days and not a single workday. Appellant was further advised of the factual and medical evidence required to establish her claim for compensation.

In a June 28, 2001 decision, the Office denied compensation on the grounds that appellant failed to allege a compensable factor of employment and, therefore, did not establish that she sustained an emotional condition in the performance of duty.

On July 23, 2001 appellant requested an oral hearing.

In a decision dated March 18, 2002, an Office hearing representative affirmed the Office's June 28, 2001 decision.

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[2] Rationalized medical opinion evidence is medical evidence which includes a physician' s rationalized opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factors identified by the employee.[3]

Workers' compensation law is not applicable 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 coverage 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 comes within coverage of the Federal Employees' Compensation Act.[4] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[5]

As a general rule, 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.[6] However, the Board has also held 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 supervisors in dealing with the claimant.[7] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[8]

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[2] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

[6] *See Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

[7] *See Elizabeth Pinero*, 46 ECAB 123 (1994).

[8] *Ruth S. Johnson*, 46 ECAB 237 (1994).

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under Act absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor in general must be allowed to perform his or her duty and that, in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisor's management style or actions taken by the supervisor will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.[9]

In this case, appellant attributes her emotional condition to having been assigned to work in a noisy and load area on September 25, 2000. The Board notes that appellant did not actually begin her work duties in the assigned area, but refused to take the work assignment because she was fearful of aggravating her preexisting post-traumatic stress disorder. She contends that the work assignment was a form of harassment by her supervisor.

Contrary to appellant's allegations, the assignment of work duties is an administrative function of the employer and is not a compensable factor of employment.[10] Appellant's objection to her work assignment amounts to frustration over not being able to work in a particular environment and is, therefore, not covered by the Act.[11]

The Board finds that there is no evidence of error or abuse by appellant's supervisor in the assignment of appellant's work duties. The record establishes that appellant was under treatment for a preexisting psychiatric condition that the employing establishment had tried in the past to accommodate with light-duty assignments. The supervisor indicated that appellant had the right to refuse the work assignment but it was the only assignment available on September 25 and 26, 2000. Appellant has not submitted any factual evidence such as witness statements to substantiate her contention that her supervisor attempted to embarrass her by announcing out loud the reason she was requesting to leave work on September 26, 2000. The supervisor acknowledges that he read the leave slip out loud but did not indicate that it was in a loud tone or that he meant to humiliate appellant. To the contrary, the supervisor stated that he was hoping to assist appellant with her medical problem if she had stayed to speak with him.

Appellant's supervisor did not harass appellant on September 26, 2000 as alleged. Mere perceptions alone of harassment are not compensable under the Act.[12] Appellant has not shown that her supervisor acted abusively in requiring her to go off the time clock if she was going to take a cigarette break prior to starting her assigned duties.

For these reasons, the Board concludes that appellant failed to establish error or abuse by the employing establishment in the handling of the administrative matter of assignment of work duties. Consequently, the Board finds that appellant has failed to allege a compensable factor of

[9] *Constance I. Galbreath*, 49 ECAB 401 (1998).

[10] *See Samuel F. Mangin, Jr.*, 42 ECAB 671 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[11] *Id*.

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

employment and is unable to establish that she sustained an emotional condition in the performance of duty.[13]

The decision of the Office of Workers' Compensation Programs dated March 18, 2002 is hereby affirmed.

Dated, Washington, DC
January 23, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[13] The Board also notes that while appellant filed a grievance and had her job reinstated despite excessive absences from work, the filing of the grievance alone does not establish harassment. Likewise, by rescinding appellant's termination notice, the employing establishment did not acknowledge any error on its part in requesting documentation supporting appellant's absences from work. *See generally*, *Mary L. Brooks*, 46 ECAB 266 (1994).