

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARYANNE J. PERRY and U.S. POSTAL SERVICE,
POST OFFICE, Cambridge, MA

*Docket No. 02-1977; Submitted on the Record;
Issued May 15, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty as alleged.

On March 17, 2001 appellant, then a 51-year-old customer service operator, filed an occupational disease claim alleging that on December 11, 1995 she became aware that she sustained bipolar disorder, severe anxiety and post-traumatic stress due to a hostile work situation.

By letter dated April 10, 2001, the Office of Workers' Compensation Programs requested additional information from appellant, including a description of the conditions or incidents at work which she believed contributed to her condition and a narrative report from a treating physician explaining how her federal employment contributed to her condition.

In a supplemental statement dated March 17, 2001, appellant alleged that, after a reorganization of the employing establishment in 1992, she was assigned to the employing establishment and began to experience difficulty sleeping, chest discomfort and severe headaches possibly from work stress. She was diagnosed with fibromyalgia, acute depression, panic disorder and post-traumatic stress in 1995. In February 2001 appellant was diagnosed with bipolar disorder, severe depression and anxiety and on February 28, 2001 was hospitalized for suicidal intent and depression.

Appellant alleged a "hostile and abusive work environment" which was "pervasive, consisting of frequent episodes of intimidation, rudeness, insults, name calling," "deliberate and offensive remarks" and age discrimination. She stated that on January 10, 1996 she went to see the acting postmaster, Dan Callahan, about a transfer to another office and Mr. Callahan told her that the only job available to her was in Cambridge and she could only work there. Appellant alleged on two occasions the head manager, Tom Reardon, told her that as long as he was in charge she would never leave Cambridge. She stated that when she called other stations she was

told the same thing. Appellant stated that the next five years “were of chronic and demoralizing remarks and statements of how stupid could be, I could be replaced etc.”

Appellant alleged that, around August and September 2000, she was sent to Mooney Street in Cambridge after being asked by the new manager, Charlie Williams, if she wanted to go. She stated that Mr. Williams told her that he did not like her sharing an office with him and that most mornings, he would lock the door so that she would have to knock to enter in order to do paperwork or work on the computer.

Appellant stated that she was told that she was hard headed and did not listen and was given conflicting orders and statements by her managers.

Appellant stated that on October 17, 2001 she found wet first class mail and informed Mr. Williams, who said to call labor relations. She alleged Mr. Williams called the employee in that morning and then called her, stating appellant “fucked up and would [not] listen and before [she] did that again and [got] everyone [r]iled up, [she] should check [her] facts.” Appellant stated that Mr. Williams started pointing his finger in her face and told her to shut her mouth and listen. Mr. Williams called her later that morning and told her that “the carriers were walking [a]ll over [her] and that [she] had fucked up and could [not] admit it.” Later that week, appellant was given conflicting orders as to giving out overtime, in order to keep the budget down and, when she refused to give a carrier overtime, Mr. Williams gave the carrier overtime; then had her come in his office and berated her for not giving the carrier overtime.

Appellant stated that on October 25, 2000 she was giving a service talk on uniforms and was pulled aside on the floor and, in the presence of the employees and two training supervisors, was told that she “had a lot of nerve giving a service talk on uniforms when [she] dress[ed] like a cleaning lady.” She stated that, when she asked if she could wear suits, Mr. Williams said no but when she asked about sneakers, he said it was okay. She asked the supervisors if there was something wrong with what she had on and they said no. Appellant stated that on the next day she was told she looked “more presentable” even though she had the same clothes on.

Appellant alleged that on October 31, 2000 she was told that she had a lot of problems and that she did not listen. When she asked why they did not send her back to Central Square, “he” replied they would not take her back and now he was stuck with her. Appellant stated that in November she was berated for materials not being sent but then it was found that the materials were transmitted.

Appellant alleged that Mr. Williams told a carrier with physical restrictions to go carry in the street and, when he came back in pain, Mr. Williams told him that he was dealing with an ineffective supervisor. She stated that on November 4, 2000 Mr. Reardon walked into her office and saw a carrier out of uniform by wearing a baseball cap. He told appellant that he would not tell Mr. Williams of the incident, but did. Appellant stated that on February 20, 2001 she left at “1:30” and told Mr. Williams she was leaving and he should remember to do netscape at 3:00. She stated that the next day he told her that they “were on report” and could she please send his boss a “ccmail” saying that they each thought the other was going to do it.

Appellant alleged that Mr. Williams told of how good their figures were but later called her into the office and told her that she had no control over the floor, did not issue discipline, did not listen, was hard headed and not changing with the time. She stated, however, that the safe was not counted because there were not enough window clerks. Appellant stated that he criticized her for allowing a union representative and a uniform “guy” on the floor but she stated he allowed union representatives on the floors on two occasions. Mr. Williams told her he wanted to return her to craft and gave her about 45 minutes to answer.

In a statement dated August 1, 2002, Mr. Williams noted that there was a reorganization in the Cambridge Post Office in August 2000 and in a meeting with the four managers and the postmaster, they agreed that appellant was the weakest of the supervisors and he volunteered to help her through coaching. He stated that the station had compliance problems with meeting the requirement to log in twice daily, untimely “CSDRS,” which was the requirement to input daily by 10:30 a.m. for national upload and excessive overtime and work hours. Mr. Williams stated that he had many conversations with appellant regarding her compliance and performance as part of his attempt to improve her performance.

Mr. Williams denied that he told appellant that he did not want her to be in the same office, although he did tell her that as a first line supervisor, her primary responsibility was to supervise the activities on the workroom floor, not in the office. He stated that he found carriers not in uniform and informed appellant of such noncompliance. Mr. Williams stated that the directive from the postmaster was that a carrier be in uniform 100 percent. He stated that he told appellant that management, like the craft employees, must also be in uniform and that when customers came in, they could not tell the difference between her and the craft or a cleaning lady. Regarding appellant’s allegations on overtime, Mr. Williams stated that he mentioned work hours and overtime and that they reviewed the situation. He stated that he instructed appellant to do weekly planning and schedules for the week. Appellant objected to his instructions but he advised that this was “the best way for the station to operate efficiently and the best way was to inform the employees.” He stated that appellant had a problem with performing daily schedules.

Mr. Williams denied he swore or used profanity toward appellant, raising his voice. He stated that he told appellant that the employing establishment was changing in that each station was accountable for budget, workhours, sick leave, overtime and customer satisfaction and that they could no longer hide inefficiencies and poor performance but must comply with postal policies and procedures.

By decision dated August 30, 2001, the Office denied the claim, finding that appellant failed to meet her burden of proof in establishing that she had an emotional condition sustained in the performance of duty.

By letter dated September 4, 2001, appellant requested an oral hearing before an Office hearing representative which was held on January 18, 2002. She submitted a witness statement from Judy Eustis, a letter carrier between October 2000 and February 2001 at the employing establishment. Ms. Eustis stated that Mr. Williams told her to disregard orders or schedules appellant had given her or to do other work without telling appellant. Ms. Eustis heard him tell other carriers the same thing. She stated that she often saw Mr. Williams pull appellant into his office, point his finger at her “in an irate and yelling manner” and appellant would leave the

office “visibly upset.” Ms. Eustis stated that Mr. Williams often gave her conflicting orders and, on several occasions, had lied to her and blamed appellant. She stated that appellant asked her to submit medical documentation but, when she brought it in, appellant was not there and she gave it to Mr. Williams. Later, he told her he did not have the documentation and appellant had lost all the paperwork.

At the hearing, appellant noted that she had been promoted from the carrier craft to a supervisory position. She stated that, when she first came to the Mooney Street facility, their productivity “was about on the bottom” and she raised it to fifth in the district. Appellant stated that on February 24, 2001 Mr. Williams came into her office and told her that she should go back to craft and she became upset and, in fact, ended up in the hospital for a week for psychiatric care. She described her medical treatment and current condition. Appellant stated it was embarrassing for her on October 25, 2001 when Mr. Williams told her that she looked like a cleaning lady in front of other staff. She stated that on October 16, 2001 a carrier, Dave Mahoney, did not take out the first class mail and when he came back from his route, she told him to deliver the mail. When appellant told Mr. Williams, he told appellant to issue Mr. Mahoney a letter of warning and when she did, he called her and Mr. Mahoney into his office, swore and yelled at her, wagged his finger in her face and ripped up the letter of warning.

Ms. Eustis testified that she had been employed at the employing establishment a little over eight years. She stated that one time Mr. Williams pointed his finger right into appellant’s face but she did not know the subject of the discussion. Ms. Eustis stated that Mr. Williams undermined appellant by telling Ms. Eustis to do a task different than what appellant had told her to do. She noted that Mr. Williams authorized her to accompany a new carrier in a snow storm even though it meant she would do overtime, but then when Mr. Reardon questioned why a carrier on light duty got overtime, Mr. Williams had both appellant and Ms. Eustis in his office, yelled at them and told appellant never to give the carrier overtime again. Ms. Eustis stated that the letter of warning being ripped up became a joke among other carriers, making them think they did not have to worry about being disciplined.

Blanca Teebagy stated that she worked for the employing establishment for 14 years.¹ She recalled when Mr. Mahoney was happy about having his letter torn up and that appellant was “very distraught.” Ms. Teebagy stated that appellant taught Mr. Williams about Netscape. She stated that, when she was a supervisor, “they were” telling appellant that she was “doing things wrong” and tell her she was suppose to issue letters which did not have anything to do with her. She stated that once Mr. Reardon told her everything was running fine especially when appellant was not there. Ms. Teebagy stated that Mr. Williams would come and “change us all around” without telling appellant, creating confusion and even told her how “ineffective” appellant was.

By decision dated April 15, 2002, the Office hearing representative affirmed the Office’s August 30, 2001 decision.

The Board finds that the case is not in posture for decision.

¹ Although appellant’s attorney stated that he submitted a statement by Ms. Teebagy, it is not in the record.

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 her 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.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁴ The issue is not whether the claimant has established harassment or discrimination under standards applied the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁵ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁶

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁷ 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.⁸

In this case, appellant has established two compensable factors in that she was harassed by Mr. Williams on two occasions. She alleged that on October 16, 2001 Mr. Mahoney did not take out the first class mail and when he came back from his route, she told him to deliver the mail. When appellant advised Mr. Williams, he instructed her to issue Mr. Mahoney a letter of warning. After she did, Mr. Williams called her and Mr. Mahoney into his office, swore at appellant and ripped up the letter of warning. The evidence establishes that Mr. Williams tore up the letter of warning and acted in an abusive manner towards appellant regarding his instructions to issue a letter of warning to a subordinate employee. Appellant also established error and abuse pertaining to the order not to grant overtime work to Ms. Eustis, who testified that

² 5 U.S.C. §§ 8101-8193.

³ *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁵ See *Martha L. Cook*, 47 ECAB 226, 231 (1995).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁷ *Clara T. Noga*, *supra* note 3 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

Mr. Williams authorized her to accompany a new letter carrier in a snow storm even, though it meant Ms. Eustis would do overtime. However, after Mr. Deardon, the manager, questioned why a carrier on light duty got overtime, Mr. Williams called Ms. Eustis and appellant into his office, yelled at appellant and instructed her not to give overtime to Ms. Eustis again. The evidence of record establishes error and abuse by Mr. Williams as to this matter. The evidence establishes that he had authorized Ms. Eustis to perform overtime work despite her light-duty work status and then abusively disciplined appellant in the matter.

Other contentions are not corroborated by the evidence of record. For instance, there was no corroborating evidence that Mr. Reardon told her that as long as he was in charge, appellant would never leave Cambridge or that Mr. Williams stated he did not want her in the same office and locked the office door. Mr. Williams denied that he told appellant he did not want to share an office with her.

There is insufficient evidence that Mr. Williams said he could not send her back to Central Square and was now stuck with her and that she was berated for not sending the materials which were transmitted. The evidence does not establish that Mr. Williams told her that, if she were in private enterprise she would be fired, that she was hindering him from doing his work with the discussion they were having and that her retirement was not going to be there and she should not have allowed a union representative and a uniform “guy” on the floor. Appellant did not provide evidence to support that she told Mr. Williams to check netscape and the next day he wanted an email saying they had both forgotten to do it.

However, since appellant has established error and abuse on two occasions, the medical evidence needs to be addressed. Appellant’s burden of proof is not discharged by the fact that she has identified employment factors which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to compensable employment factors. The case will be remanded for the Office to address the medical evidence and determine whether the established compensable factors of employment caused or contributed to appellant’s emotional condition. After any further development it deems necessary, the Office should issue a *de novo* decision.

The April 15, 2002 and August 30, 2001 decisions of the Office of Workers' Compensation Programs are set aside, and the case remanded for further action consistent with this decision.

Dated, Washington, DC
May 15, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member