United States Department of Labor
Employees' Compensation Appeals Board

EVELYN J. SIMPSON, Appellant	)	
and	)	**Docket No. 04-7**
	)	**Issued: March 16, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Providence, RI, Employer	)	

Appearances:
Linda DeCarlo, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 29, 2003 appellant filed a timely appeal of decisions by the Office of Workers' Compensation Programs dated January 27 and August 19, 2003, which denied her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On May 21, 2002 appellant, then a 51-year-old letter carrier, filed a notice of occupational disease alleging that she suffered from stress caused by factors of her employment. By letter dated July 23, 2002, the Office advised appellant of the factual and medical evidence required to establish her claim for compensation. The Office specifically requested that appellant provide a detailed statement of alleged work factors that she felt had caused or

contributed to her emotional condition. In a series of personal statements, appellant described a number of work events that she felt had caused her emotional stress. Appellant noted that her stress and anxiety have been ongoing for two years. She alleged that she had improperly been given a notice of suspension for not following orders, that her delivery route was increased following an office route count, that she was forced to work overtime and during her lunch hour, that she had been denied requests for assistance, that she was threatened during a meeting on May 16, 2002 and that she was constantly harassed by her supervisors.

Appellant submitted reports from Dr. Richard M. Lubens, a Board-certified internist and Joseph Janas, a licensed social worker, indicating that she was under treatment for stress and anxiety. She provided medical records and a report from Dr. Michael B. Atkins, a Board-certified oncologist, concerning her diagnosis of melanoma skin cancer.

The record contains witness statements from appellant's fellow coworkers Maureen A. Murray, Gloria Schieb and James Cotter and statements from a waitress and customers at a local coffee shop, who stated that appellant was seen completing paperwork during her lunchtime. Appellant submitted a statement from Paul Chute, a chief union steward, who stated that appellant reported to him that she was forced to complete her route in eight hours even though she really need an additional one and one-half hours to finish the job.[1] The employing establishment also submitted statements from appellant's supervisors, which are more fully discussed in the analysis below.

In a decision dated January 27, 2003, the Office determined that appellant failed to establish a compensable work factor and, therefore, she failed to show that she was injured in the performance of duty. Appellant requested a hearing, which was held on July 2, 2003. In a decision dated August 19, 2003, an Office hearing representative affirmed the Office's January 27, 2003 decision.

LEGAL PRECEDENT

Workers' compensation is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[2] the Board discussed at length the principles applicable to the adjudication of emotional conditions and the distinctions as to the type of employment situations giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act.[3] When an employee experiences an emotional reaction to his or her regular assigned employment duties or to a requirement imposed by the employment or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such factors, the disability is generally regarded as due to an injury

[1] There is a witness statement dated January 24, 2001, but the signature is illegible and, therefore, it is considered to be of little probative value.

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

arising out of and in the course of employment and comes within coverage of the Act.[4] On the other hand where the disability results from an employee's emotional reaction to employment matters, which are not related to the employee's regular or specially assigned work duties or to requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within coverage of the Act.[5] An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[6] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[7]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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 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.[8] The Board will review the evidence to determine whether the alleged incidents and conditions of employment constitute compensable employment factors.

ANALYSIS

In this case, appellant attributes her emotional condition to several alleged work factors. She first described that she has melanoma skin cancer and underwent chemotherapy ending in July 1999, which caused her leg to swell and made it difficult for her to perform her letter carrier duties. Appellant noted that she was also under work restrictions related to a lifting injury. Appellant alleged that on December 18, 2000 she was called into her supervisor's office for a predisciplinary hearing and charged with not following orders. She then received a notice of suspension for seven days commencing January 3, 2001. Appellant submitted documentation indicating that she filed an Equal Employment Opportunity (EEO) complaint and that her seven-day suspension was reduced to a letter of warning based on a settlement agreement between the parties.

Although appellant contends that she was given the suspension in error, the settlement agreement indicates that the suspension was rescinded without an admission of guilt by either party. The Board has held that the fact that an employing establishment lessens a disciplinary action taken toward an employee does not establish that the employing establishment acted in an erroneous or abusive manner.[9] The Board finds nothing in the record, from which to conclude

[4] *James E. Norris*, 52 ECAB 93 (1999).

[5] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[6] *William H. Fortner*, 49 ECAB 324 (1998); *Ronald C. Hand*, 49 ECAB 113 (1997).

[7] *Ronald C. Hand supra* note 6.

[8] *James E. Norris, supra* note 4.

[9] *Sherry L. McFall*, 51 ECAB 175.

that the employing establishment acted unreasonably in issuing the letter of suspension to appellant.

Appellant generally alleged that she was overworked.[10] She stated that her stress-related problems followed an office count that was performed on her route on April 29, 2002 and a road count performed on May 3, 2002, at which time her supervisor, Don Nelson, stayed with her and watched her perform her job duties. She alleged that he yelled and threatened her when she went over her allotted time by one-half hour. Appellant stated that she was forced to work in bad weather and overtime after dark in unfamiliar areas with poor lighting. She described feeling exhausted and in fear that she would fall and reinjure her back or hurt her leg.[11]

In a July 2, 2002 memorandum, Mr. Nelson stated that he had been appellant's supervisor for the past five years. He related that appellant had been diagnosed with melanoma, which made her fragile with respect to personal and work issues. He noted that the during the week preceding the filing of her Form CA-2 claim, appellant was in the process of moving her residence, which added an additional 30 minutes each way to her daily commute. Mr. Nelson stated that appellant was assigned work just like any other carrier and that due to the lack of mail volume she had been assigned clerical duties to ensure that she had sufficient work for an eight-hour day.

The Board finds no factual support in the record for appellant's allegations that she was overworked, that she was denied assistance on her route or that she was assigned an extra half-hour of a route in violation of her work restrictions. The assignment of work is an administrative or personnel matter of the employment establishment and not a duty of the employee and absent evidence to support a finding of error or abuse by the employing establishment, is not compensable.[12] In a November 11, 2002 letter, Mr. Nelson responded to appellant's allegations concerning increases in her workload. He explained that appellant's route was an eight-hour assignment and that the volume of mail dictated the length of the route. He indicated that, on days when mail volume was heavy, she would get the necessary help to complete her route. Alternatively, when mail volume was low, she was required to work on an additional route to give her a complete eight-hour day. He denied that appellant was given an additional one-half hour to her route and stated that her route remained the same as when she left work in May 2002.

Based on Mr. Nelson's statements, the Board finds no error or abuse in the manner, in which appellant's work was assigned. She has failed to establish that she was given extra work on her route as alleged. The Board further finds that appellant did not establish a compensable

[10] The Board notes that the witness statements of record do not directly support appellant's contention that she was forced to complete her route in eight hours or that she had to work through her lunch hour. The statements of the witness only relate appellant's version of events. None of the witnesses personally heard appellant's supervisors direct her to work on her lunch hour or tell her to complete her route in a certain amount of time.

[11] Appellant alleged that she sustained a concussion on April 12, 2000 after being chased by a dog while delivering the mail. She alleged that she was pressured by her supervisors to return to light duty despite the recommendations of her physician. The Board, however, finds no factual support in the record for this allegation.

[12] *Janet D. Yates*, 49 ECAB 240 (1997).

work factor with respect to Mr. Nelson's monitoring of her work activities.[13] There is no evidence of record that Mr. Nelson acted unreasonably in monitoring appellant's mail route to see how her work was performed.[14]

Appellant further alleged that during a May 16, 2002 meeting, she and her fellow coworkers were insulted by being called "slobs" by supervisor, Barry R. Schupp. She alleged that they were also told that their workload was being increased. The meeting was described by appellant as degrading and threatening.

The Board finds that appellant's emotional reaction to the May 16, 2002 meeting was self-generated. In a July 6, 2002 letter, Mr. Schupp acknowledged that he meant to relay a strong message on May 16, 2002 regarding the appearance and performance of the letter carriers; however, he denied that his intent was to be threatening or hostile. In general, a supervisor or manager must be allowed to perform their duties. While employees will at times dislike the actions taken, mere disagreement or dislike or a supervisory or management action will not be actionable, absent error or abuse.[15] The Board notes that, while the record establishes that Mr. Schupp used inappropriate language in referencing the letter carriers as "slobs," the Act does not give coverage to every statement uttered in the workplace.[16] The Board acknowledges that appellant was a member of a class action suit filed against Mr. Schupp for the language he chose to use during the meeting, but the Board does not find evidence in this record that Mr. Schupp's conduct rose to the level of abuse or harassment.

Appellant also alleged that her emotional condition was due to having been assigned an additional one-half hour to her route on May 17, 2002. She did not feel she could take on the extra work since her route already consisted of over 400 possible deliveries and she had to push herself to complete her route on time. Appellant allegedly told Mr. Nelson that she could not take on the extra work but he ignored her complaints. She described that on May 17, 2002 she went out on her route but started to develop a headache and upset stomach. She allegedly called Mr. Nelson around 3:00 p.m. to tell him that she was unable to finish her route due to stress-related illness. She stated that, when she returned to the employing establishment, he got in her face and began yelling at her, which made her even more upset so she went home.

The Board has carefully reviewed the record and finds no factual support for appellant's contention that she was given additional work to perform on May 17, 2002. Mr. Nelson has specifically denied the assignment of an additional one-half hour to appellant's route. There is also no evidence of record to corroborate that Mr. Nelson yelled at appellant.[17]

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[13] *See Sandra Davis*, 50 ECAB 450 (1999) (the monitoring of work activities falls within the category of administrative and personnel actions and is not compensable in the absence of error or abuse).

[14] *Michael Ewanichak*, 48 ECAB 304 (1997).

[15] *Christophe Jolicoeur*, 49 ECAB 553 (1998).

[16] *Frank B. Gwozdz*, 50 ECAB 434 (1999).

[17] Mr. Schupp denied in his July 6, 2002 letter that appellant was yelled at by any supervisor, noting that she was treated no differently than any other employee.

Appellant also contends that she was harassed by the employing establishment when her supervisor sought updated medical information concerning her work restrictions and her absence from work on September 17, 2002. The Board notes that the record contains a November 22, 2002 letter, wherein Mr. Schupp told appellant that her failure to provide the requested medical documentation relative to her continued absence from work could result in corrective action including her removal from the job. The Board finds that the employing establishment acted reasonably in requiring appellant to provide medical documentation to support her need for continuing medical restrictions on the job. The mere fact that appellant filed an EEO complaint against the employing establishment for sending out the letter does not in and of itself establish error or abuse by the employing establishment in this administrative matter.[18] The Board is not persuaded that the letter was an attempt to harass appellant and finds that the employing establishment acted reasonably under the circumstances presented in the record. For harassment to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination did in fact occur. Mere perceptions of harassment are not compensable under the Act.[19]

Lastly, appellant alleged that she was harassed by Ron Pauline, when she was sitting under film lights and Mr. Pauline passed by and asked if she was getting her daily suntan. She felt this comment was made in a sarcastic manner since he knew she had melanoma. The Board, however, finds no factual support for concluding that this remark was made as alleged. Appellant did not provide any corroborating evidence, such as witness statements, to support her allegation of harassment.

For these reasons, the Board concludes that appellant failed to allege a compensable work factor and, therefore, failed to establish that she sustained an emotional condition in the performance of duty. Because appellant failed to allege a compensable work factor, the Board finds it unnecessary to review the medical evidence.[20]

CONCLUSION

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

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

[19] *Ronald C. Hand*, *supra* note 6.

[20] *See John Polito*, 50 ECAB 347 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 19 and January 27, 2003 are affirmed.

Issued: March 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member