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MILISSA RODRIGUEZ, Appellant)	
)	
and)	Docket No. 04-2021
)	Issued: January 14, 2005
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Arecibo, PR, Employer)	
)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

On August 12, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated November 7, 2003, denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the November 7, 2003 decision.

The issue is whether appellant sustained an emotional condition causally related to factors of her federal employment.

On May 2, 2003 appellant, then a 22-year-old window clerk, filed an occupational disease claim alleging that she had a major depressive episode due to verbal harassment from Coworker Nerida Bajanás. She alleged that management was aware of the harassment but took no corrective action and the harassment from Ms. Bajanás led to appellant's reassignment to another post office. In several written statements, appellant alleged that Ms. Bajanás called her

names such as “bitch” in front of coworkers and customers and made false allegations about her to the police, that on October 7, 2002 Ms. Bajanass threatened her, saying, “I’m going to finish you” and humiliated her by telling a customer that she preferred to work alone rather than in “bad company,” that on April 2, 2003 she was interrupted at work by two police officers who questioned her regarding a complaint filed by Ms. Bajanass and that on April 7, 2003 she answered the telephone at work and the caller was Ms. Bajanass who called her a prostitute and stated, “You’re going to get it” and “I hope you try to do something about it.”

On March 15, 2002 several employees submitted to the employing establishment a written statement that personal animosity between Ms. Bajanass and other employees had adversely affected the work environment. They asked for her removal from her position.

By letter dated May 21, 2003, the Office asked appellant to provide additional information, including a detailed description of the incidents that she believed contributed to her condition with specific dates, names of individuals involved and the specific circumstances.

In a letter dated November 26, 2001, received by the Office on June 20, 2003, appellant advised the employing establishment that Ms. Bajanass was harassing her. She alleged that Ms. Bajanass told a postmaster, a union representative and the Equal Employment Opportunity (EEO) representative that appellant should be removed from her position.

In a letter dated May 20, 2003, an employing establishment representative, Antonio Guzman, indicated that appellant and Ms. Bajanass disliked each other for personal reasons unrelated to their jobs, a “love triangle” situation.¹ He stated that Ms. Bajanass had obtained a court protective order against appellant requiring her to stay a certain distance away. Mr. Guzman stated that appellant was moved to another facility because she was a part-time employee whereas Ms. Bajanass was a full-time permanent employee.

In a statement dated October 24, 2003, Supervisor Miguel Ugarte stated that on one occasion appellant indicated that Ms. Bajanass had done something to upset her and if Mr. Ugarte did not take action, she would hold him personally responsible. After consulting with postal inspectors, Mr. Ugarte told both appellant and Ms. Bajanass to stay off work for one day.

In an undated letter received by the Office on October 29, 2003, an employing establishment representative, Ana Rosado, stated that on April 2, 2003 two police officers came to the post office to give appellant a copy of a “stalking order” against her for an incident that occurred the previous day away from the post office. She told the officers to talk to appellant away from the employing establishment premises. Ms. Rosado stated that Ms. Bajanass denied that on April 7, 2003 she called appellant a prostitute and stated, “You’re going to get it.” She stated that, on April 7, 2003, after consulting the labor relations office, she relocated appellant to another post office in order to comply with a court order prohibiting appellant and Ms. Bajanass from working in the same area and to protect the workplace from violence and harassment.

¹ In a letter dated October 28, 2003, Mr. Guzman stated that Ms. Bajanass was the former “live-in” partner of appellant’s present “live-in” partner and the three individuals worked in the same post office.

Appellant also submitted medical evidence in support of her claim.

By decision dated November 7, 2003, the Office denied appellant's claim on the grounds that she had not established that her emotional condition was causally related to compensable factors of her employment.²

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Federal Employees' Compensation Act.⁵ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁷

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

² The record contains evidence submitted subsequent to the Office decision of November 7, 2003. The jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). Therefore, the Board has no jurisdiction to review this evidence for the first time on appeal.

³ *George C. Clark*, 56 ECAB ____ (Docket No. 04-1572, issued November 30, 2004).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *George C. Clark*, *supra* note 3.

⁷ *Lillian Cutler*, *supra* note 4.

within coverage of the Act.⁸ 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.⁹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.¹⁰ However, 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.¹¹

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.¹² 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.¹³

ANALYSIS

Appellant alleged that a coworker, Ms. Bajanias, harassed her by calling her names such as "bitch" and making false allegations about her to the police, that on October 7, 2002 Ms. Bajanias threatened her, saying, "I'm going to finish you," that on April 2, 2003 she was interrupted at work by police officers who questioned her regarding a complaint filed by Ms. Bajanias, and that on April 7, 2003 Ms. Bajanias called her a prostitute and stated, "You're going to get it." She alleged that Ms. Bajanias told a postmaster and other individuals that she should be removed from her position. 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.¹⁴ 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.¹⁵

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Lillian Cutler*, *supra* note 4.

¹⁰ *James E. Norris*, 52 ECAB 93 (2000).

¹¹ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

¹² *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹³ *Id.*

¹⁴ *See David W. Shirey*, 42 ECAB 783 (1991).

¹⁵ *See Donna J. DiBernardo*, 47 ECAB 700 (1996).

Ms. Rosado, an employing establishment representative, stated that Ms. Bajanias denied that on April 7, 2003 she called appellant a prostitute and stated, "You're going to get it" and there is insufficient evidence of record to establish that this incident occurred. Regarding the other allegations, there is also insufficient corroborating evidence of record, such as witness statements or the results of grievances or investigations, to establish that these allegations are factual. In a March 15, 2002 written statement, several employees stated that animosity between Ms. Bajanias and other employees had adversely affected the work environment and they asked for her removal. However, this general statement does not establish any specific incidents of harassment by Ms. Bajanias against appellant. Appellant has provided insufficient evidence to establish that Ms. Bajanias harassed her. Therefore, this allegation cannot be deemed a compensable factor of employment.

Appellant alleged that the employing establishment was aware of harassment from Ms. Bajanias but took no corrective action. Actions that the employing establishment took in order to resolve the personal conflict between appellant and Ms. Bajanias are administrative in nature. As noted above, administrative or personnel matters are not compensable under the Act unless error or abuse is established. In a statement dated October 24, 2003, Mr. Ugarte stated that on one occasion when appellant reported being upset by Ms. Bajanias he told both of them to stay off work for one day. Ms. Rosado stated that, on April 7, 2003, after consulting the labor relations office, she relocated appellant to another post office in order to comply with the court order prohibiting appellant and Ms. Bajanias from working in the same area and to protect the workplace from violence and harassment. Mr. Guzman indicated that it was appropriate and fair to reassign appellant to another facility in order to separate her from Ms. Bajanias because appellant was only a part-time employee whereas Ms. Bajanias was a full-time permanent employee. Ms. Rosado dealt appropriately with the incident when two police officers attempted to serve appellant with a court order by telling them to do this away from the employing establishment premises. An employee's complaints concerning the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.¹⁶ This principle recognizes that a supervisor or manager must be allowed to perform his duties and 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.¹⁷ In this case, there is insufficient evidence of record that appellant's supervisors erred or acted abusively in the performance of their duties, in attempting to resolve the situation between appellant and Ms. Bajanias.

As appellant failed to provide sufficient evidence to establish that she was harassed at work by Ms. Bajanias or that the employing establishment erred or acted abusively in its handling of the conflict between appellant and Ms. Bajanias, the Office properly denied her claim for an emotional condition on April 2, 2003.¹⁸

¹⁶ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁷ *Id.*

¹⁸ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Garry M. Carlo*, 47 ECAB 299 (1996).

CONCLUSION

The Board finds that appellant failed to establish that her emotional condition was causally related to any compensable factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2003 is affirmed.

Issued: January 14, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member