United States Department of Labor
Employees' Compensation Appeals Board

VALERIE J. BUCHER, Appellant	)	
and	)	**Docket No. 05-534**
	)	**Issued: November 1, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 4, 2004 merit decision, denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 19, 2003 appellant, then a 45-year-old window clerk, filed a claim alleging that she sustained an emotional condition in the performance of duty.[1] In statements dated April 19

[1] Appellant indicated on the form that the injury occurred on April 16, 2002, but she submitted statements which asserted that the injury occurred over a period of time.

and 20, 2002, appellant asserted that on April 16, 2002 she sustained stress when Larry Kessler, a supervisor, advised her that an investigative interview would be held the next day about an incident that occurred on April 15, 2002 concerning the financial closeout of her transactions.[2] She asserted that management officials required the investigative interview in order to make her into a "scapegoat" for their mismanagement. Appellant claimed that towards the end of the work day on April 15, 2002, Mr. Cornell "started a controversy" and engaged in a "tirade" regarding whether or not to retain delivered express labels. She asserted that his continued talking prevented her from completing the financial closeout report for the day. Appellant claimed that at 5:11 p.m., she advised Stephen Hnatiuk, a supervisor, about Mr. Cornell's disruptive actions and asked if she could leave on time. She stated that Mr. Hnatiuk did not say that she could not leave so appellant punched out at 5:15 p.m.

Appellant further asserted that she later learned that because she had not signed out on the closeout computer the other employees were locked out of the computer and could not complete the financial closeout report. She claimed that, if management officials had followed proper procedures they would have prevented this situation from occurring by ensuring that there were passwords for each employee in the safe. Appellant alleged that on at least one prior occasion, four individuals, including Mr. Cornell and James Eskridge, a supervisor, had been "hovering at the window and talking loudly during daily financial closeout." She claimed that Mr. Kessler demeaned and belittled her and committed harassment and discrimination on April 16, 2002 when he stated, "I know you are on medications" and asked, "Have you taken your medication?". Appellant alleged that Mr. Kessler maliciously repeated a question, "Are you taking your medication?", which had been asked by James St. Pierre, another supervisor. She claimed that the employing establishment's abuse worsened after she filed several Equal Employment Opportunity (EEO) complaints.

In a statement dated July 8, 2002, appellant alleged that Sheryl Ellington, a supervisor, improperly denied her continuation of pay in connection with the present case and asserted that, she should have been paid from her accumulated sick leave. She claimed that Mr. Kessler would not allow her to be paid until he subjected her to "badgering and rehashing of the events which caused my mental breakdown." Appellant alleged that Mr. Cornell failed to properly represent her in union matters and that on several occasions he conspired with management against her. She claimed that he invaded her privacy by telling her that she could only file a grievance regarding her request to convert her sick leave to continuation of pay if she agreed to sign releases for her medical documentation. Appellant alleged that Mr. Cornell's wife, Joyce Beck-Cornell, harassed her since 1989, including occasions when appellant asked what she was doing after following her into the restroom and when she "paged me incessantly over a physiological function." She generally alleged that Mr. Cornell and several management officials abused their power and repeatedly violated rules and regulations during the past nine years.

In statements dated September 11 and October 9, 2002, appellant alleged that the employing establishment intentionally delayed the processing of her emotional condition claim because it did not provide a complete record of her work and leave coverage to the Office and failed to complete the employing establishment sections of her Form CA-7 claims for periods of

[2] Appellant indicated that the investigative interview was changed to April 18, 2002.

Office disability compensation.[3] She claimed that the employing establishment placed her on leave without pay status in May and August 2002, even though she had adequate sick leave. Appellant asserted that Mr. St. Pierre improperly asked for her computer password in connection with her request for continuation of pay, conducted an improper audit regarding pay matters and wrongly issued her letters of indebtedness in various amounts because errors had been made in handling her payroll adjustments.

Appellant submitted numerous documents relating to complaints and grievances she filed concerning various claims of harassment, discrimination and other improper actions by the employing establishment. The complaints and grievances were filed before various bodies, including the Equal Employment Opportunity (EEO) Commission, the Merits Systems Protection Board, the National Labor Relations Board and United States District Courts. These records contain several settlements and final decisions, but there is no indication that any complaint or grievance was resolved in appellant's favor with a finding of wrongdoing by the employing establishment. The record contains a September 16, 1999 settlement of an EEO complaint of discrimination through disparate treatment and retaliation which indicates that the matter was resolved without prejudice to either party. An April 26, 2000 final decision issued in connection with an EEO complaint found that appellant had not shown that the employing establishment discriminated against her due to her medical condition.

Appellant also submitted numerous handwritten documents, dated mostly between 1995 and 2002, in which she detailed various concerns she had about the actions of supervisors, coworkers and union representatives. Most of the documents were produced in a journal style whereby she described events which were nearly contemporaneous with the dates that appeared at the tops of the documents. Appellant submitted other documents of general application, such as union newsletters, excerpts from union contracts and portions of employee handbooks and regulations.[4]

Appellant submitted numerous medical reports of Dr. Anne Tyson and Dr. Walter E. Afield, both attending Board-certified psychiatrists. A number of these reports indicated that she was suffering from bipolar disorder.

Appellant submitted an October 7, 2002 statement, in which Stanley Sher, a coworker, asserted that, when she left her window to go to the restroom Ms. Beck-Cornell would request her presence at her window over the intercom, but that most other employees could come and go from their windows without any questioning. Mr. Sher claimed that after a policy was issued prohibiting employees from leaving the premises while on their breaks, Mr. St. Pierre selectively enforced the policy against a few employees, including appellant when she went to her car in the parking lot. He suggested that her breaks were timed while others were not and that Ms. Beck-Cornell and Mr. St. Pierre asked him about her whereabouts when she was not standing at her window but obviously was working. He stated, "[Appellant] was verbally, threatened and ridiculed by [Ms. Beck-Cornell and Mr. St. Pierre] at the tiniest hint of any kind of mistake or

[3] Appellant indicated that she was told that the Forms CA-7 could not be submitted until her claim was accepted.

[4] Appellant also submitted documents concerning work assignments and leave usage and reports she filed to allege the existence of unsafe practices and security problems in the workplace.

error in her work to the point of [Mr. St. Pierre] threatening her with the possibility of losing her job."

The record also contains various statements in which the employing establishment officials indicated that appellant was not subjected to harassment, discrimination or other improper actions. In a statement dated April 22, 2002, Mr. Kessler claimed that on April 15, 2002 she failed to advise Mr. Hnatiuk that she left the closeout computer open under her login and password, an action which violated security procedures and prevented the financial closeout report from being completed that day.[5] He had previously been advised that appellant sometimes did not take her medication and asserted that, when he asked her whether she had been taking her medication on a regular basis he did so due to concern about her well-being rather than any ill intent. Mr. Kessler advised appellant on April 16, 2002 that she could not leave without letting anyone know where she was in the financial closeout procedure and asserted that she responded that she knew that she made a mistake by leaving the office on April 15, 2002 under such circumstances.

In a statement dated December 17, 2000, Mr. St. Pierre noted that, since September 2000 there was a policy prohibiting employees from leaving the premises during their breaks and that he stopped and questioned many employees who had not followed the policy. He asserted that he often questioned appellant and Mr. Sher about their whereabouts because they were two employees who constantly failed to adhere to the policy and repeatedly left their windows without notifying anyone.[6] Mr. St. Pierre indicated that appellant advised him that she acted differently when she did not take her medication and claimed that, when appellant seemed confused or agitated he asked her whether she had taken her medication out of concern rather than an intent to harass her.

In a letter dated May 7, 2002, Ms. Ellington indicated that she denied appellant's continuation of pay claim because her claimed injury was not alleged to have occurred on a single day. In a statement dated December 13, 2002, Delberta Rossignol, a supervisor, stated that she attempted to explain to appellant without success that she could not file a Form CA-7 until her emotional condition claim was accepted. In a letter dated June 14, 2002, Mr. Cornell advised appellant that it did not appear that the employing establishment acted improperly when it refused to convert her sick leave to continuation of pay. He informed her that, if she wished to file a grievance she would have to authorize the release of any relevant documentation.

By decision dated March 11, 2003, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors.

[5] The record also contains an April 15, 2002 statement in which Mr. Hnatiuk asserted that appellant came to him on that date and stated that she was tired of how Mr. Cornell was delaying her from closing out and leaving. He indicated after she left for the day he discovered that she was still logged on to her computer and that this circumstance prevented him from preparing the report for the day.

[6] In a January 3, 2001 letter, Mr. Eskridge indicated that employing establishment policy prevented employees from leaving the premises while on a scheduled break.

Appellant requested a hearing before an Office hearing representative which was held on July 7, 2004. She testified that Ms. Beck-Cornell followed her into the restroom, but did not do so with other employees. Appellant also alleged that the employing establishment discriminated against her by taking actions which it did not take against other employees, such as timing her breaks, preventing her from going to her car during breaks and paging her on a regular basis when she left her window. Prior to the hearing, appellant submitted several medical reports which had previously been submitted to the Office.

By decision dated and finalized October 4, 2004, the Office hearing representative affirmed the Office's March 11, 2003 decision.

LEGAL PRECEDENT

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.[7] 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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[8]

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[9] This burden includes the submission of a detailed description of the employment factors or conditions which a claimant believes caused or adversely affected the condition or conditions for which compensation is claimed.[10]

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.[11] 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

[7] 5 U.S.C. §§ 8101-8193.

[8] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[9] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[10] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[11] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[12]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant claimed that Mr. Kessler, a supervisor, demeaned and belittled her and committed harassment and discrimination on April 16, 2002 when he stated, "I know you are on medications" and asked, "Have you taken your medication?". She claimed that he would not allow her to be paid until he subjected her to "badgering and rehashing of the events which caused my mental breakdown." Appellant generally claimed that the employing establishment retaliated against her for filing EEO claims by subjecting her to disciplinary actions and asserted that employing establishment officials abused their power and broke rules. She claimed that Ms. Beck-Cornell, a supervisor, followed her into the restroom, but did not do so with other employees. Appellant also claimed that the employing establishment discriminated against her by taking actions which it did not take against other employees, such as timing her breaks, preventing her from going to her car during breaks and paging her on a regular basis when she left her window. She alleged that Mr. Cornell, a coworker and union representative, who was married to Ms. Beck-Cornell, harassed her on April 15, 2002 and other occasions by acting in a disruptive manner while she attempted to complete financial closeout reports.

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.[13] 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.[14]

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and she has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.[15] Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided insufficient corroborating evidence such as probative witness statements, to establish that the statements actually were made or that

[12] *Id.*

[13] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[14] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[15] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

the actions actually occurred.[16] With respect to her claims that Mr. Kessler and Mr. St. Pierre made harassing comments about her need for medication, the Board notes that there is no evidence that such harassment occurred. The record contains statements in which Mr. Kessler and Mr. St. Pierre both indicated that they were aware that appellant sometimes did not take her medication and only asked her if she had taken her medication out of concern for her well-being. The record contains a statement in which Mr. Sher, a coworker, asserted that appellant was treated differently from other employees by Ms. Beck-Cornell and Mr. St. Pierre because she was paged when she left her window, her breaks were timed and she was not allowed to leave the premises to go to her car while on her breaks. However, this statement is too vague in nature to establish that appellant was discriminated against in this respect. Mr. Sher did not provide specific examples of other employees who were not subject to such scrutiny when they engaged in similar actions.[17] Appellant filed complaints and grievances regarding some of these matters, but there is no indication that any complaint or grievance was resolved in her favor with a finding that the employing establishment committed harassment or discrimination. Thus, she has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant also asserted that on April 16, 2002 she was wrongly subjected to disciplinary action when Mr. Kessler advised her that an investigative interview would be held the next day about an incident that occurred on April 15, 2002 concerning the financial closeout of transactions for that day.[18] She asserted that the employing establishment wrongly blamed her for a series of events which led to the closeout report not being finished on time on April 15, 2002.[19] Appellant claimed that the employing establishment placed her in leave-without-pay status in May and August 2002, even though she had adequate sick leave and asserted that Mr. St. Pierre mishandled various matters regarding her pay which led her to receive improper letters of indebtedness.

The Board finds that these allegations relate 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.[20] Although the handling of disciplinary actions, the management of pay matters and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[21] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses

[16] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[17] The several statements of employing establishment officials suggest that appellant often left her window without advising coworkers where she was going.

[18] It appears that the investigative interview was changed to April 18, 2002.

[19] Appellant claimed that the interference of coworkers and the failure of management to keep employees passwords in a safe contributed to the problems that occurred that day.

[20] *See 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).

[21] *Id.*

error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[22]

Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. She filed complaints and grievances regarding some of these matters, but there is no indication that any complaint or grievance was resolved in appellant's favor with a finding of wrongdoing by the employing establishment. With particular respect to the April 15, 2002 incident and the subsequent request for an interview regarding the matter, there is no evidence that the employing establishment acted improperly with respect to this matter.[23] The record contains statements by Mr. Kessel and Mr. St. Pierre which suggest that appellant violated employing establishment rules on that date and that it was proper for them to conduct an investigation. Thus, she has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that the employing establishment intentionally delayed the processing of her emotional condition claim because it did not provide a complete record of her work and leave coverage to the Office and failed to complete the employing establishment sections of her Form CA-7 claims for periods of Office disability compensation. She also alleged that Ms. Ellington, a supervisor, improperly denied her continuation of pay in connection with the present claim. The Board has generally found that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[24] Although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee and thus, not compensable absent evidence of error or abuse by the employer.[25] Appellant has not submitted any evidence showing that the employing establishment committed error or abuse in processing her compensation claim.[26]

Appellant alleged that Mr. Cornell failed to properly represent her in union matters and invaded her privacy by telling her that she could only file a grievance regarding her request to convert her sick leave to continuation of pay if she agreed to sign releases for her medical documentation. However, the Board has adhered to the general principle that union activities are

[22] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[23] The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors. *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[24] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[25] *See Terry L. Ross*, 53 ECAB 570, 577 (2002).

[26] The record reveals that appellant was told that the Forms CA-7 could not be submitted until her claim was accepted.

personal in nature and are not considered to be within an employee's course of employment or performance of duty.[27]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[28]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 4, 2004 decision is affirmed.

Issued: November 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[27] *See Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981). Moreover, there is no evidence that Mr. Cornell violated privacy rules with respect to appellant. The Board notes that she submitted numerous handwritten documents, dated mostly between 1995 and 2002, in which she detailed various concerns she had about the actions of supervisors, coworkers and union representatives. The Board has reviewed these documents and notes that they do not provide any further details regarding the incidents and conditions that appellant identified in her other statements as causing or aggravating her emotional condition.

[28] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).