United States Department of Labor
Employees' Compensation Appeals Board

ELLEN M. BLAKE, Appellant	)	
and	)	**Docket No. 05-1061**
	)	**Issued: September 6, 2005**
U.S. POSTAL SERVICE, POST OFFICE, East Weymouth, MA, Employer	)	

Appearances:
Katherine D. Smith, 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 April 4, 2005 appellant filed a timely appeal of an April 5, 2004 decision of an Office of Workers' Compensation Programs' hearing representative, affirming a March 10, 2003 decision that appellant had not established an emotional condition causally related to compensable work factors. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On August 13, 2002 appellant, then a 44-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition causally related to he federal employment. The reverse of the claim form indicated that she stopped working on July 31, 2002. In an accompanying statement, appellant alleged that the employing

establishment maintained an "extremely tense environment." She explained that letter carriers had been told they were not allowed to speak or ask questions at meetings, and she had been told by a supervisor that she was "the clumsiest person he had ever met" after she was accidentally hit in the head. Appellant referred to a policy called the "golden hour," which prohibited speaking during the first hour and required permission to go to the bathroom. According to appellant, she felt pressured to complete assignments in an unreasonable time, and was told if she did not complete assignments timely "they would do what they have to do," which appellant interpreted as meaning that she would be harassed during the day. Appellant stated that letter carriers were constantly monitored. She alleged that in March 2000 she was told that three minutes would be deducted from her route for blowing her nose. She felt that scanners used to track carriers location was harassment. Appellant stated that she questioned whether air conditioning would be provided in the vehicles, was told by a supervisor that he did not have air conditioning in his house, and she felt they were not concerned about the issue. In addition, appellant stated that her route had recently been abolished and that she was not notified until the day before the change. She noted filing a grievance in 1997 due to harassment, and concluded that her work environment was "unhealthy, stressful and abusive."

The employing establishment submitted responses from appellant's supervisors. In a November 18, 2002 letter, a Mr. Sparda explained that the golden hour policy was designed to limit conversation during the first hour of the day when mail should be available for casing. He indicated that permission was not required to go to the bathroom. Mr. Sparda stated that the allegations that appellant was pressured, threatened or overburdened were untrue; her route was evaluated at eight hours and a procedure was available to request help. He stated that scanners were used to maintain a consistent delivery status and to help locate carriers in an emergency. Mr. Sparda also stated that appellant was informed verbally that her route could be abolished, and she was properly notified of the change. With respect to the abolishment of appellant's route, the record contains a July 26, 2002 letter to appellant explaining that staffing levels were being realigned to meet the needs of the work facility. Appellant was advised that her position was abolished and she was declared an unassigned regular employee.

In a statement dated November 20, 2002, a Mr. Haggerty stated that, while the employing establishment had considered the carriers' concerns about heat, air conditioning in vehicles was not cost effective. A November 20, 2002 letter from a Mr. Capeless indicated that the golden hour policy did require permission to go to the bathroom and that conversation between carriers was permitted. Mr. Capeless discussed an incident in which appellant reported being behind on her route because of the heat; the supervisor indicated that one hour of mail was assigned to an employee on the overtime list.

By decision dated March 10, 2003, the Office denied appellant's claim for compensation. The Office found that appellant had not established a compensable work factor with respect to her claim.

Appellant requested an oral hearing before an Office hearing representative, which was held on January 27, 2004. She discussed the abolishment or her mail route, and stated that she was not familiar with her new route and her requests for help were ignored. Appellant indicated that she worked the new route for approximately three days, was criticized for not completing the route timely and was told she used unauthorized overtime. Appellant stated, "It was

unreasonable expectations, the job duties. I think that day I just got so overwhelmed." She also indicated that she filed a grievance regarding the abolishment of her route.

In a statement dated February 18, 2004, appellant discussed an incident on July 31, 2001 involving a supervisor, Mr. Driscoll. Appellant stated that she spoke to a union steward regarding the overtime list, and when she tried to give the telephone to Mr. Driscoll, he told her to hang up the telephone, shut up and go back to her case. A statement from the union steward stated that Mr. Driscoll yelled at appellant to hang up the telephone and go back to work. There is also a September 10, 2002 statement from a coworker that Mr. Driscoll told appellant to shut up and get back to work.

By decision dated February 5, 2004, an Office hearing representative affirmed the March 10, 2004 decision.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she 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.[1]

The Board has held that 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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.[2]

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[3]

[1] *Leslie C. Moore*, 52 ECAB 132 (2000).

[2] *Ronald J. Jablanski*, 56 ECAB ___ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[3] *Id.*

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered.[4] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.[5]

ANALYSIS

Although appellant briefly referred her "job duties," the allegations in this case do not implicate the performance of assigned duties. The primary allegations relate to the abolishment of appellant's mail route in July 2002, and her perception that she was not offered adequate help on the new route and was unfairly criticized. These matters relate to administrate actions by the employing establishment, rather than there performance of job duties, and are generally not covered under the Act.[6] An administrative or personnel matter will be considered a compensable work factor only where the evidence discloses error or abuse on the part of the employing establishment.[7] Appellant did not submit any evidence of error or abuse by the employing establishment in this case. She indicated that a grievance was filed, but no evidence was presented as to error or abuse. The employing establishment indicated that the route was eliminated due to a staffing realignment, appellant was not pressured and help was available if requested. The record does not establish a compensable work factor with respect to the elimination of appellant's route or the employing establishment's actions with respect to a new route.

Appellant also alleged a tense working environment and referred to a "golden hour policy," monitoring of mail carriers and lack of air conditioning. The employing establishment indicated that there was no blanket prohibition against talking or a requirement to ask permission to go to the bathroom; the policy was designed to limit conversation during the first hour when casing of mail was required. Although the monitoring of work activities is generally related to employment, it is an administrative function of the employing establishment, not a duty of the employee.[8] The employing establishment reported that the use of scanners was a national policy to maintain a consistent delivery status and locate carriers in an emergency. With respect vehicle air conditioning, the employing establishment indicated that it was not cost effective. The record does not contain probative evidence of error or abuse with respect to an administrative matter in this case.

Appellant also referred to a July 2001 incident in which she alleged that she was yelled at to shut up and get back to work, as well as another incident where she was accused of being

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

[5] *See Charles E. McAndrews,* 55 ECAB ___ (Docket No. 04-1257, issued September 10, 2004).

[6] *Felix Flecha,* 52 ECAB 268 (2001).

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

[8] *Janet I. Jones,* 47 ECAB 345, 347 (1996).

clumsy. To the extent that appellant alleging that she was subject to verbal abuse, she must submit probative evidence to support such a claim. Not every statement uttered in the workplace will give rise to coverage under the Act.[9] A raised voice by a supervisor in an isolated incident does not warrant a finding of verbal abuse.[10] In this case, the evidence does not establish verbal abuse or a verbal altercation sufficient to establish a compensable work factor.

The Board accordingly finds that the evidence of record does not substantiate a compensable work factor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.[11]

CONCLUSION

The Board finds that appellant did not allege and substantiate a compensable work factor and therefore the Office properly denied her claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 5, 2004 is affirmed.

Issued: September 6, 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

[9] *Mary A. Sisneros*, 46 ECAB 155, 164 (1994).

[10] *Joe M. Hagewood*, 56 ECAB ___ (Docket No. 04-1290, issued April 26, 2005).

[11] *Margaret S. Krzycki*, *supra* note 4.