

**United States Department of Labor
Employees' Compensation Appeals Board**

DORIS O. RODEN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Birmingham, AL, Employer**

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**Docket No. 05-1223
Issued: January 23, 2006**

Appearances

*J.J. Smith, Jr., for the appellant
Office of the 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 May 11, 2005 appellant filed a timely appeal from a March 1, 2005 merit decision of the Office of Workers' Compensation Programs, denying modification of an October 26, 2001 decision, for her emotional condition claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

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

Appellant, a 47-year-old operations manager, filed a claim for benefits based on an emotional condition on June 12, 2000 alleging stress, anxiety, high blood pressure, headaches and insomnia caused by factors of her employment. She submitted a statement, received by the

Office on August 23, 2000, alleging that Gloria Tyson, her supervisor, engaged in a pattern of harassment. The allegations included:

(1) During the postmasters' convention on October 26, 1999, appellant was sitting at a table when Ms. Tyson, her supervisor, walked over and sat in a chair next to her. Appellant alleged that Ms. Tyson stated that she liked her hair and that she liked her too.

(2) Appellant stated that Ms. Tyson instructed her to drive her to Greystone subdivision to discuss the building of her home with her real estate agent. She alleges that Ms. Tyson made her sit in the car in the hot sun and wait for her more than an hour until she finished her business.

(3) Appellant alleged that during a discussion in Ms. Tyson's office her blouse fell open, inadvertently revealing part of her breast. She alleged that Ms. Tyson then stated "I like little girls like you."

(4) Appellant alleged that in an August 10, 1999 staff meeting, Ms. Tyson instructed areas 2, 3, 4 and 5 to explain their work reports. She alleges that during her presentation, Ms. Tyson ridiculed her, laughed heartily at her and did not allow her to complete her statements.

(5) Appellant stated that she was summoned for an August 6, 1999 meeting at Ms. Tyson's office, only to be kept waiting for an hour. She returned to her office, only to be called back by Ms. Tyson's secretary, after which she waited for another two hours, until 7:00 p.m. Appellant alleged that she heard Ms. Tyson make several telephone calls while she was being kept waiting, even though Ms. Tyson knew she had a child in day care and the day care facility closed at 5:30 p.m.

(6) Appellant stated that during a June 8, 1999 staff meeting, Ms. Tyson threatened her staff by telling them that she would have their checks or fire them. She also alleged that Ms. Tyson stated during the meeting that some people could not think after 3:00 p.m. or at night while they were dreaming. Appellant further alleged that after she asked if she could be detailed to the manager operations programs support position in 30 days, Ms. Tyson just looked at her and did not respond;

(7) Appellant alleged that Ms. Tyson authorized an investigation of her and a male clerk out of the Lineville Post Office, alleging that they had an inappropriate sexual relationship and were embezzling funds from the employing establishment. She denied these charges and stated that Ms. Tyson's investigation made her feel powerless;

(8) Appellant states that Ms. Tyson improperly rescinded her submission to have one of her employees downgraded;

(9) Appellant asked Ms. Tyson to recommend her for a transfer to an officer in charge position in Florida. Ms. Tyson replied that she did not like her decisions

regarding prior Equal Employment Opportunity (EEO) and other employee-related incidents. Appellant claimed that, although her membership in the advanced leadership program should have granted her the job, Ms. Tyson recommended another employee who did not want the assignment and was not on the advanced leadership program. When she asked Ms. Tyson to commit to facilitating her career advancement, Ms. Tyson simply stood up, walked to the door and stated that she should discuss the matter later. When appellant asked her if she wanted her to leave, Ms. Tyson said yes;

(10) Appellant alleged that during a May 10, 1999 meeting Ms. Tyson hollered at her “Doris what are you doing?” when she was taking notes. The other employees present laughed. After the meeting, another employee told appellant that every manager needed a whipping post and that she served this role for Ms. Tyson;

(11) During a March 14, 2000 meeting Ms. Tyson asked appellant what she was doing to improve safety in her area. After completing her work safety statements Ms. Tyson asked whether she worked in the afternoon, even though appellant worked after 6:00 p.m. Ms. Tyson then expressed dissatisfaction and told her she wanted to be paid when she was doing appellant’s job and that, if she was doing her job on a regular basis she did not need her.

(12) During an April 5, 2000 meeting appellant told Ms. Tyson that she felt she had been harassed, humiliated, belittled and screamed at in front of others. She stated that Ms. Tyson denied these allegations and advised her that she did not like her thought process. Ms. Tyson further stated that she had plans to remove appellant from her office within 30 days. After the meeting appellant stated that Ms. Tyson called her and asked her if she was intimidated by her.

(13) While driving home on a freeway appellant received a call from Ms. Tyson, who screamed “I want to talk to you, where are you?” I need you back here in my office.” Appellant stated that she was on her way home and that she asked Ms. Tyson if they could discuss the situation tomorrow. She told Ms. Tyson that it was raining, road conditions were hazardous and she did not want to return to work at that time.

(14) Tyson denied appellant’s request to transfer one of her employees. Appellant felt this constituted favoritism because the transfer was given to Milton Jacobs, a similarly situated employee.

(15) Appellant asserts that Ms. Tyson informed the union representative that Mr. Jacobs “could do what he wanted” concerning transfers.

(16) On April 12, 2000 appellant called in to inform Ms. Tyson that she would not be able to attend a meeting that day because her daughter was ill and had to be taken to the doctor. She alleged that Ms. Tyson asked what was wrong and if she could get someone else to take her. Ms. Tyson then asked for her to call back

after the doctor's appointment. Appellant called several times but she was unable to talk with Ms. Tyson.

(17) Appellant states that on April 13, 2000 Ms. Tyson instructed her subordinate, Linda Copeland, to attend a meeting in Huntsville. She alleged that she was not notified of Ms. Tyson's instruction to Ms. Copeland and had already scheduled her for a budget meeting. Appellant felt that Ms. Tyson was undermining her authority through her subordinates.

(18) Appellant stated that Ken Baylor, a supervisor, requested a transfer from Texas to Alabama. She informed the postmaster and Ms. Tyson that Mr. Baylor was not a good candidate for the position. Appellant alleged that Ms. Tyson made a telephone call and approved the transfer while she was still in her office. Ms. Tyson then informed her that she was finished with her.

In a statement dated December 1, 2000, Ms. Tyson responded to appellant's allegations:

(1) Ms. Tyson denied making suggestive remarks about appellant's appearance on the date in question. She stated that she approached the booth at which appellant and a coworker were sitting and merely told her that her hair appeared to be longer.

(2) Ms. Tyson denied that she "instructed" appellant to drive her to Greystone subdivision and forced her to sit in the hot sun for an hour. She stated that she had made an appointment to drop off a check there and asserted that appellant had already agreed to drive her to the Talledega Post Office on that date. Ms. Tyson asked appellant if she could stop off at Greystone on her way to the post office, which appellant agreed to do since it did not constitute an inconvenience.

(3) Ms. Tyson denies the occurrence of the "blouse" incident and denied making this statement.

(4) Ms. Tyson denied the allegation that she ridiculed or laughed at appellant at this meeting. She asserted that she simply conducted the business at hand during this meeting.

(5) Ms. Tyson stated that, while she had several meetings scheduled for this date she does not recall having scheduled a meeting with appellant. She denied that she deliberately made her stay until 7:00 p.m., knowing that she had a child to pick up.

(6) During the June 8, 1999 meeting, Ms. Tyson explained to everyone that she expected them to do their jobs and that, if they needed help she would help them. She told her staff, in jest, that, if she had to help them all of the time she expected to get paid for doing their work. Ms. Tyson also stated that this statement was not directed at anyone in particular. In addition, she stated that appellant did not ask to be detailed into the manager operations programs support position during the

June 8, 1999 meeting, but did so two weeks later. Ms. Tyson stated that she had chosen another employee for this job and told appellant that she was not aware she had been interested.

(7) Ms. Tyson denies authorizing an investigation of appellant and a coworker. She stated that the inspection service did not require her authorization to investigate and that she was only made aware of the investigation by the human resources manager.

(8) Appellant failed to obtain prior approval for the downgrade, as Ms. Tyson had requested, in accordance with personnel service guidelines.

(9) Ms. Tyson confirmed that she recommended another employee for the position and told appellant that she was not comfortable with some of the decisions she had made. She also chose the other employees because appellant had no experience in higher level coverage, as did the other employee. Ms. Tyson's decision had nothing to do with the advanced leadership program because it was not relevant.

(10) Ms. Tyson stated that she was out of town attending a meeting on May 10, 1999 and denied that this incident ever occurred.

(11) Ms. Tyson stated that she only questioned appellant about safety issues with regard to the actual hours in which she worked. She felt this was appropriate since Ms. Tyson was seeking to improve the safety score for priority mail performance.

(12) Ms. Tyson stated that the April 5, 2000 meeting concerned a mid-year discussion. She denied telling appellant that she planned to remove her in 30 days; appellant misinterpreted Ms. Tyson. What Ms. Tyson actually told appellant was that in order to grant her request for a transfer to an OIC assignment, it had to be implemented within 30 days, as the incumbent postmaster was ready to depart. Ms. Tyson admitted calling appellant and asking her if she thought that she had intimidated her, but did so only to reassure her that she never harassed or intimidated her or any of her employees.

(13) Ms. Tyson called appellant while on speakerphone with a coworker present, to inquire about a letter from an employee defending appellant's position in an EEO complaint of discrimination filed against appellant. She stated that the letter contained a great deal of hearsay information and she was attempting to determine why the letter had been written because it appeared as if an effort was being made to get people to take sides. Ms. Tyson denied screaming and did not demand that appellant return to the office after hours in hazardous conditions.

(14) Ms. Tyson denied acting out of favoritism and stated that she referred Ms. Woods' request to a review panel, which denied her the transfer.

(17) Ms. Tyson denied telling the union representative that Mr. Jacobs “could do what he wanted” concerning transfers.

(18) Ms. Tyson denied asking appellant to have someone else take her daughter to the doctor. She asked her to call back and let her know how it was going, as she was concerned about her daughter. She stated that, when appellant called back she was not in the office.

(19) A luncheon with union and organizational leaders was scheduled for April 13, 2000 to establish a voice of the employee committee, which would work on an internal survey project. Ms. Tyson stated that she did not plan, schedule or determine who would attend the luncheon, although she did say that Ms. Copeland had asked to be a member of the voice of the employee committee and accepted the invitation. She denied appellant’s allegation that she was attempting to undermine her authority.

(20) Ms. Tyson admitted discussing the transfer and approving it, but denied making the statement that she was finished with appellant or that she humiliated her in effecting the transfer.

In a report dated October 27, 2000, Dr. Mary Chestnut, Ph.D., diagnosed chronic post-traumatic stress disorder caused by severe harassment from Ms. Tyson. She stated that appellant had experienced insomnia, tearfulness, rapid heartbeat, suicidal thoughts, social isolation, severe loss of appetite, weight loss and fear of anything or anybody representing the employing establishment.

By decision dated December 8, 2000, the Office denied appellant compensation for an emotional condition, finding that she had not established a compensable factor of employment.

By letter dated December 12, 2000, appellant requested an oral hearing, which was held on May 30, 2001. By decision dated October 26, 2001, an Office hearing representative affirmed the Office’s December 8, 2000 decision.

In a letter dated January 29, 2002, appellant’s representative requested reconsideration. Her representative attached a copy of a form letter, “[c]hange to lower grade,” which, he asserted, indicated that appellant voluntarily accepted a transfer to a position as manager of customer relations in Riverside, California, at a lower grade and willfully withdrew her EEO cases to escape the hostile environment created by Ms. Tyson.¹ Appellant submitted several

¹ On the change to lower grade form appellant signed a statement which reads, “I have read and fully understand the conditions of this change to lower level. Further, I accept the conditions described above and below voluntarily, without coercion or intimidation.”

statements from coworkers, including an undated statement from George Miller, a former postmaster at the Talladega, Alabama Post Office. He stated:

“I have worked as a manager of Post Office Operations and I must say I have not seen a [m]anager as committed and dedicated as [appellant]. [She] worked long hours to achieve the goals of the district. [Appellant] spent countless [hours] visiting [other] office to see if she could help them in any way. Her coworkers, for working so hard, often teased and laughed at her.

“When [appellant] was assigned area three it was one of the most challenging areas in the A1 district. [She] turned her area completely around and it was known as one of the best in the district. Her postmasters were proud to have someone to speak up for them.

“Once Mrs. Tyson arrived as the district manager of area one it was very obvious that she had a strong dislike for [appellant]. It was very obvious in her staff meeting with her responses to [appellant], also [appellant’s] budget was cut while others received more hours. The staff was very aware of this situation but was afraid to speak about it, because of reprisal. Many of the staff even asked [appellant] not to speak to them during staff meetings or in Ms. Tyson’s presence. I saw [appellant] go from a very outgoing person to a very withdrawn, introverted person.”

In an October 20, 2004 statement, Ms. Tyson responded to the allegations made by appellant and Mr. Miller. She stated:

“I have reviewed the information [appellant] submitted to [the Office] for a reconsideration of her injury claim.

“As part of her evidence, [appellant] submitted a statement from Mr. Smith, National Representative, National Association of Postmasters. In his statement, Mr. Smith stated that ‘[appellant] willfully withdrew (settled) the following EEO case to escape the hostile environment.’ I refute this allegation. I have never treated her with anything but professional courtesy and respect.

“Mr. Miller’s statement is not credible given the fact that he would not have been present at the staff meetings he referenced in his statement. He was not one of my direct reports. Only my direct reports would have attended the staff meetings, nor do I find credible his unsupported allegation that ‘[m]any of the staff even asked [appellant] not to speak to them during staff meetings, nor in Ms. Tyson’s presence.’ As stated above, I treated [appellant] the way I treat all my direct reports -- with dignity and respect.”

In statements received by the Office on October 20, 2004, two of appellant’s coworkers, Ms. Copeland and Ms. Conner asserted that they never witnessed Ms. Tyson treating appellant in

an undignified, disrespectful or discriminatory manner and did not create an intimidating or hostile workplace.

Appellant submitted statements from coworkers James Schilling and Roderick Carlton, received by the Office on December 27, 2004, which contradicted Ms. Tyson's assertion that only her direct reports attended her staff meetings and treated her in a derogatory, disrespectful, hostile and unprofessional manner. These employees stated that Ms. Tyson created a hostile, intimidating and tense atmosphere at these meetings.

Another employee, Archie Turner, submitted a December 19, 2004 statement in which he asserted, as did Mr. Schilling and Mr. Carlton, that there were employees other than direct reports who attended Ms. Tyson's staff meetings. However, he also stated that he never witnessed her treating appellant in an undignified or disrespectful manner at these meetings and that he was unaware that there were staff members who were afraid to speak with appellant in Ms. Tyson's presence. When asked to describe the climate at Ms. Tyson's staff meetings, Mr. Turner stated "she was definitely in charge." He further stated that he was not aware of any differences between appellant and Ms. Tyson.

By decision dated March 1, 2005, the Office denied modification of the October 26, 2001 Office decision.

By decision dated March 1, 2005, the Office found that appellant did not submit evidence sufficient to warrant modification of the Office's December 8, 2000 decision.

By decision dated March 1, 2005, the Office found that appellant did not submit evidence sufficient to warrant modification of the Office's December 8, 2000 decision on the grounds that appellant did not establish a compensable employment factor.⁴

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.² There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.³ In other words, in order to discharge the claimant's burden to establish a claimant's occupational disease claim for an emotional condition, appellant must submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁴

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁴ See *William P. George*, 43 ECAB 1159, 1168 (1992).

If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.⁵

ANALYSIS

Appellant has alleged, in general terms, harassment from Ms. Tyson, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the allegations,⁶ nor has she submitted evidence sufficient to establish that Ms. Tyson engaged in a pattern of harassment toward her or created a hostile workplace environment.⁷ There are in fact conflicting accounts regarding Ms. Tyson's conduct and demeanor toward appellant. The record contains statements from her, Ms. Tyson, who denied appellant's allegations of harassment and mistreatment and five coworkers at the employing establishment. Of these six employees, three -- Mr. Miller, Mr. Schilling and Mr. Carlton -- supported appellant's allegations that Ms. Tyson treated her in a rude, disrespectful, demeaning and unprofessional manner. They also stated that Ms. Tyson engendered a hostile, intimidating workplace environment and contradicted Ms. Tyson's assertion that they would not have known how she behaved in staff meetings because they were not employees who directly reported to her. Two other employees, however, Ms. Copeland and Ms. Conner, stated that they never witnessed Ms. Tyson treating appellant in an undignified, disrespectful or discriminatory manner. They also denied that she created an intimidating or hostile workplace. Another employee, Mr. Turner, stated as did Mr. Messrs, Mr. Schilling and Mr. Carlton that, contrary to Ms. Tyson's assertion there were employees other than direct reports who attended Ms. Tyson's staff meetings. However, he also stated that he never witnessed her treating appellant in an undignified or disrespectful manner at these meetings. Mr. Turner advised that he was unaware there were staff members who were afraid to speak with appellant in Ms. Tyson's presence. He stated that Ms. Tyson "was definitely in charge" at her staff meetings, but did not assert that she created a tense, intimidating atmosphere at these meetings. Mr. Turner further stated that he was not aware of any differences between appellant and Ms. Tyson. The Board finds the evidence of record is insufficient to substantiate appellant's allegations that Ms. Tyson treated her in a derogatory, demeaning and unprofessional manner.

While appellant has made generalized allegations regarding harassment and derogatory statements, she has failed to sufficiently corroborate these allegations. Ms. Tyson denied her allegations that she was angry or verbally abusive to appellant during her staff meetings or that

⁵ *Id.*

⁶ See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

⁷ Appellant listed 18 different incidents with her June 12, 2000 claim which, she asserted, demonstrated a pattern of harassment on the part of Ms. Tyson. These incidents, which were refuted by Ms. Tyson, were noted by the Board. However, the Board lacks jurisdiction to consider these incidents, as the Office found they were not compensable acts of employment in its December 8, 2000 decision, over which the Board does not have jurisdiction.

she ever treated her with anything other than dignity and respect. Further, although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.⁸ Appellant has not shown how such isolated comments, assuming they did occur, would rise to the level of verbal abuse or otherwise fall within the coverage of the Federal Employees' Compensation Act,⁹ nor has appellant provided factual support for her allegations that her supervisor created or permitted a hostile work environment.¹⁰

The Office reviewed appellant's allegations of harassment, abuse and mistreatment and found that they were not substantiated or corroborated. To that end, the Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by her, as she failed to provide any corroborating evidence for her allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.¹¹ For this reason, the Office properly determined that these incidents constituted mere perceptions of her and were not factually established. Accordingly, appellant has failed to establish that she was subjected to harassment or mistreatment at the workplace, thereby she has not established a factor of employment in this regard.

The Board further finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹² In the instant case, appellant has presented no evidence that she accepted a cross-country transfer from the employing establishment to a position at a lower grade in exchange for her withdrawal of EEO cases and to escape the hostile environment created by Ms. Tyson. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹³ However, appellant has failed to substantiate or provide corroboration for these allegations.

Appellant has submitted no evidence that the employing establishment acted unreasonably or committed error with regard to this incident involving personnel matters, nor has

⁸ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

⁹ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

¹⁰ *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

¹¹ See *Debbie J. Hobbs*, *supra* note 2.

¹² See *Alfred Arts*, *supra* note 9.

¹³ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

she demonstrated that the employing establishment acted unreasonably or committed error or abuse in discharging its administrative duties. This factual scenario, therefore, does not constitute a factor of employment. In the absence of agency error or abuse, this personnel matter did not constitute a compensable factor of employment.¹⁴ Regarding appellant's allegation that she developed stress due to the uncertainty of her job duties and her insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.¹⁵

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.¹⁶

CONCLUSION

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

¹⁴ 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, 502-3 (1992).

¹⁵ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁶ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 23, 2006
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