

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

V.L., Appellant

and

U.S. POSTAL SERVICE, EAST NEW YORK
STATION, Brooklyn, NY, Employer

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**Docket No. 08-1597
Issued: January 2, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 14, 2008 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated February 4, 2008 and the Office hearing representative dated April 30, 2008 denying appellant's claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

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

FACTUAL HISTORY

On May 10, 2007 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that, on April 7, 2007, as a result of her federal employment, she sustained a work-related injury in the form of depression, stress and migraine headaches. She listed the cause of the injury as: "harassment, supervisor creating a hostile environment, constant harassment." In a statement received May 29, 2007, appellant indicated, "When I am at work, I

feel unsafe, because I know they are out to get me.” She indicated that she wanted “to be left alone and not be constantly harassed for no other reason than personal.” By letter dated May 14, 2007, the employing establishment controverted the claim. The manager for the branch of the employing establishment noted that a dispute arose on April 7, 2007 between appellant and her supervisor about what work she was allowed to do, that the supervisor sent her home because there was no available work within her restrictions and advised appellant to complete a Form CA-7 for the rest of the day at which point appellant became hostile. The employing establishment alleged that appellant filed a Form CA-1 in retaliation for being told that she would have to file a Form CA-7 every day that suitable work was not available.

By letter with a facsimile date of May 18, 2007, the employing establishment further controverted the claim, contending that appellant has not established “fact of injury, that the date of injury was 30 days prior to the filing of the claim, that the medical evidence was insufficient to establish causal relationship and that appellant’s claimed condition was self-generated as a result of dissatisfaction with appropriate managerial action to ensure that contractual rights of other craft employees were not violated.

Appellant submitted evidence that she filed an Equal Employment Opportunity (EEO) claim with regard to alleged harassment/hostile work environment at the employing establishment.

By letter dated May 22, 2007, the Office requested that appellant submit further information.

In a statement dated May 24, 2007, appellant made various allegations with regard to the alleged hostile work environment. She noted that, on April 7, 2007, a dispute arose over her assignment at which point Mrs. Gooding told appellant to “Shut up,” that appellant told her not to speak to her like that and that further words were exchanged and that Mrs. Gooding threatened to call the postal inspectors on appellant and have her “put out.” Appellant alleged that she told Mrs. Gooding that she had no cause to do so and was angry because appellant had ended their friendship months before. She further alleged that she filed an EEO complaint because Mrs. Gooding was vindictive and unprofessional. Appellant indicated that the mediator stated that he was going to make a resolution that Mrs. Gooding treat appellant with dignity and respect and not create a hostile environment. She also alleged that on April 23, 2007 a coworker, who was a friend with Mrs. Gooding (Teolinda Madera), wrote a statement that appellant had threatened her and threatened to blow up the employing establishment. Appellant also noted another alleged incident on April 25, 2007 when Mrs. Gooding and Ms. Madera told Dave Nelson that appellant was sitting in the parking lot with a coworker, Joseph Warren, when she jumped out and threatened another violent act. She further alleged that on April 26, 2007 she became very upset when confronted with this allegation. Appellant also noted an incident on May 9, 2007 when she alleged that she was trying to “rack a route” but Mr. Nelson told her that he would not allow her to do clerk work, that he wanted her off the clock and yelled at her. She further noted that Mr. Nelson yelled at her on May 11, 2007, telling her to get out and not come back to work until May 28, 2007.

In a statement dated May 29, 2007, Mr. Warren stated that he did not witness appellant make any threatening or intimidating gestures towards Ms. Madera on April 25, 2007.

In a decision dated July 2, 2007, the Office denied appellant's claim as she failed to provide factual evidence, other than her statement, that demonstrated that she had been abused by her supervisor.

On July 7, 2007 appellant requested review of the written record. In her statement, she indicated that Mr. Nelson was abusive to her and made false statements about her. Appellant noted that on June 5, 2007 Mr. Nelson became abusive again and that the police responded. She submitted a copy of a police report which noted that she alleged that she was assaulted by her supervisor at the employing establishment. The officer noted: "Harassment/Complainant stated during a verbal dispute, [perpetrator] hit her on the arm causing no visible injuries."

By decision dated October 18, 2007, the hearing representative set aside the Office's July 2, 2007 decision and remanded the case for further development. Specifically, the hearing representative noted that, as appellant alleged incidents that occurred over more than one work shift, the Office should treat her claim as a claim for an occupational disease. The hearing representative also instructed the Office to further develop the evidence.

By letter to appellant dated November 13, 2007, the Office indicated that it would now treat appellant's claim as an occupational disease claim.

The Office further developed appellant's claim. In a June 5, 2007 incident report, Mr. Nelson indicated that, on June 5, 2007 at approximately 11:15 a.m., he asked appellant why she was still in the building and not delivering mail. He noted that appellant told him that he was not her boss and that he should mind his own business. Mr. Nelson informed appellant that he was her supervisor, that her restrictions allowed only one hour of delivery and that yesterday it took her three hours, and that he informed her that she would be attending driver refresher training and sent to the collection unit to work. He indicated that appellant started ranting that this was not true. Mr. Nelson noted that at approximately 11:40 a.m. a dispute arose over the fax machine in that he informed appellant that the fax machine was not working and that she had to deliver mail. He indicated that appellant responded that she could use the fax. Mr. Nelson noted that appellant ignored his instructions and took the paper tray off the machine and struck him in the chest. He indicated that appellant stated that he hit her first, but he denied this. Mr. Nelson noted that he told appellant to "hit off the clock" and she refused.

Mr. Nelson also completed an EEO investigative affidavit. He indicated that he was one of appellant's supervisors. Mr. Nelson noted that appellant was never placed off duty on May 9, 2007 and was entitled to pay and that all she had to do was follow instructions and complete a Form CA-7.

In a December 11, 2007 letter, Mrs. Gooding noted that on April 7, 2007 she was the supervisor on duty but that the alleged conversation with appellant never took place. She indicated that she never told appellant to shut up, never threatened to call the postal inspector and was never appellant's friend. Mrs. Gooding denied that Mr. Brown told her that she must treat appellant with dignity and respect.

In a statement dated December 12, 2007, Mr. Nelson followed up on his earlier statement by indicating that Ms. Madera did indicate that she was being threatened and harassed by

appellant and that, when Ms. Madera gave him the requested written statement, he initiated follow up. He further noted that at no time did Allan A. Butcher, the customer services manager, tell him to leave appellant alone.

In a memorandum dated December 13, 2007, Mr. Butcher indicated that he did receive a statement from Ms. Madera on or about April 23, 2007 stating that appellant was harassing her verbally and that appellant stated that one day she would come to work and blow it up. He noted that Ms. Madera had no witnesses to these claims and appellant denied the allegation. With regard to the parking lot incident, Mr. Butcher noted that Mr. Nelson e-mailed him on April 24, 2007 stating that he got a call from Ms. Madera claiming that appellant was laughing at her as she left the parking lot and that appellant stated that Ms. Madera “will get her real soon.” He noted that when Ms. Madera arrived home she received a call from child welfare and that Ms. Madera believed that appellant had made an anonymous call to the department. Finally, Mr. Butcher noted that at no time did he tell Ms. Madera that she should have written a letter of apology nor did he speak with Mrs. Gooding or Mr. Nelson and tell them to leave her alone.

In a statement dated December 13, 2007, Ms. Madera indicated that on numerous occasions she felt threatened by appellant and informed supervisors. She listed various incidents when appellant called her names and belittled her. Ms. Madera noted that on April 25, 2007 appellant yelled in the parking lot to “watch what’s going to happen,” that when she went home she was informed that Child Protective Services had showed up at the house to follow up on anonymous claim that she was abusing her children, and that the next day appellant stated “ha ha yeah I did it.” She denied that Mr. Butcher ever asked to her to write an apology letter.

On June 5, 2007 appellant was notified that she was placed on an off-duty status without pay, alleging that she assaulted Mr. Nelson when he instructed her to not use the fax machine.

By decision dated February 4, 2008, the Office denied appellant’s claim as she had not established a compensable factor of employment.

On February 12, 2008 appellant requested review of the written record.

By decision dated April 30, 2008, the Office hearing representative affirmed the February 4, 2008 decision of the Office.

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.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 5 U.S.C. §§ 8101-8193.

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.²

Appellant 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.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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.⁵ 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.⁶

ANALYSIS

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

Appellant alleged that harassment on the part of her supervisors contributed to her emotional condition. To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from a claimant's performance of her regular duties, these could constitute employment factors.⁷ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁸ The Board also notes that, although verbal altercations and difficult relationship with

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 705-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

supervisors may constitute compensable factors of employment, they must be sufficiently detailed by the claimant and supported by the record.⁹

Appellant alleged that she was harassed when on April 7, 2007 a dispute arose between Mrs. Gooding and her with regard to an assignment. She alleged that Mrs. Gooding told her to “Shut up” and that she threatened to have appellant “put out.” Appellant alleged that Mrs. Gooding harassed her because appellant ended their friendship. Her allegations are denied by Mrs. Gooding who indicated that she never told appellant to “shut up,” never threatened to call the postal inspector and never was her friend. A claimant must establish a factual basis for allegations that the emotional condition was caused by factors of her employment.¹⁰ There is no independent evidence in support of appellant’s assertions. Accordingly, the Board finds that appellant did not establish that this event occurred as alleged. The Board further notes that, even if Mrs. Gooding had used the phrase, “Shut up,” that such an isolated comment, under the circumstances of the present case, would not rise to the level of harassment.¹¹ Further, appellant’s allegations that a mediator told appellant’s supervisor that she must treat appellant with respect is not corroborated by other evidence and, in fact, there are denials that this occurred. Without such corroborating evidence, appellant failed to establish that the statements actually were made or the events occurred.¹² Appellant’s general allegations that Mrs. Gooding was vindictive and unprofessional amount to general unsubstantiated charges not covered under the Act.¹³

Appellant also noted that Mr. Nelson was abusive to her and made false statements about her. Mr. Nelson noted that there was a dispute when he asked her why she was still in the building and not delivering mail and appellant told him to mind his own business. He informed appellant that he was her supervisor, that he discussed her restrictions, her hours for delivery and that she needed to attend driver refresher training and she disputed this. Reactions to disciplinary matters, such as oral admonishments or letters of warning, regarding conduct are administrative in nature and not compensable unless it is established that management erred or acted abusively.¹⁴ Furthermore, the Board finds that it was a reasonable exercise of supervisory discretion for Mr. Nelson to counsel appellant and her reaction to these comments would be considered self-generated and not a compensable factor of employment.¹⁵ There was also an

⁹ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *see Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *see Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹¹ *See Joe M. Hagewood*, 56 ECAB 479 (2005) (finding that the mere fact a supervisor or employee may raise his voice during the course of a conversation does not warrant a finding of verbal abuse).

¹² *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹³ *See Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁴ *Sherry L. McFall*, 51 ECAB 436 (2000).

¹⁵ *See Linda J. Edwards Delgado*, 55 ECAB 401 (2004).

incident on that date when appellant indicated that Mr. Nelson assaulted her and Mr. Nelson indicated that he was assaulted by appellant. The police responded, stating that there was a verbal dispute and that appellant alleged that she was hit by Mr. Nelson, but the police officer noted no visible injuries. The Board finds that there is no evidence in the record to establish that appellant was assaulted by Mr. Nelson other than appellant's comments and the inconclusive police report.

Appellant alleged that she was stressed because of false allegations made by Ms. Madera against her. There is evidence in the record that Ms. Madera raised issues regarding appellant. However, appellant's most serious allegations, including her allegations that Ms. Madera stated that appellant threatened to blow up the employing establishment, are not substantiated by independent evidence. With regard to other allegations made by Ms. Madera, the Board finds that the employing establishment properly responded with regard to these complaints and that appellant's reactions to this reasonable response was self-generated.¹⁶

Appellant alleges that she was improperly told to leave work due to unavailability of work within her restrictions. This is also an administrative matter. There is no evidence that the employing establishment acted unreasonably or abusively in telling appellant to leave due to unavailability of work within her restrictions.¹⁷

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.¹⁸

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.

¹⁶ See *Linda J. Edwards Delgado*, *supra* note 15.

¹⁷ See *Sherry L. McFall*, *supra* note 14.

¹⁸ As appellant has not established any compensable factors, the Board need not consider the medical evidence of record. See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated April 30, 2008 and the Office decision dated February 4, 2008 are affirmed.

Issued: January 2, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board