

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

D.L., Appellant)	
)	
and)	Docket No. 10-1565
)	Issued: March 17, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 25, 2010 appellant filed a timely appeal from a January 21, 2010 merit decision of the Office of Workers' Compensation Programs. 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 June 23, 2009 appellant, then a 57-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained moderate depression, with anxiety, panic attacks, insomnia and fearfulness, as a result of her federal employment. On the claim form she indicated that she had been dealing with difficult work situations. The reverse of the claim form reported that appellant stopped working on May 22, 2009.

In a June 24, 2009 statement, appellant stated that in January 2008 she had suffered “retaliation activities” by two employees and been subject to an unfair termination of her employment. She stated that she returned to work in April 2008 and her supervisor at that time, Michelle Robinson “constantly found unjustifiable reasons to harass me concerning washroom privileges, attendance and reasons to deny my leave request.” According to appellant in October 2008 a new supervisor, Adrienne Mason, arrived and immediately gave appellant “unnecessary discipline” by entering absent without leave (AWOL) into the system. She stated that Ms. Mason continued to be rude regarding work assignments, she endured gossip in the office and a coworker overheard the supervisor making a rude comment regarding her. Appellant asserted that Ms. Mason “constantly uses my time in order not pay me, call me ignorant or stupid” to harass her. She alleged that on January 26, 2009 the supervisor prevented her from clocking in until she signed a new Form 3971 (leave request). According to appellant Ms. Mason had originally approved a leave request, forged appellant’s signature on a new form denying the request and as a result of this “illegal activity” she was underpaid.¹ She discussed a May 21, 2009 meeting, when another supervisor, Chris Paladin, made a “false statement” that she did not see appellant at work on the evening of May 6, 2009, and appellant was “unnecessarily disciplined.” Appellant stated that on May 22, 2009 she saw a “check list for May 6” showing she had been at work until 4:30 p.m. She stated that she began crying and requested that she be taken to the emergency room.

The record contains correspondence from appellant to supervisors. In a letter dated June 8, 2009 to Ms. Paladin, appellant stated that several months earlier a “deems desirable” was placed in her record without notification or discussion. She stated that there was “purposely imposed harassment, disparity in treatment, failure to pay me properly on numerous occasions, name calling and poor judgment or communication skills.” Appellant stated that on May 21, 2009 she was falsely accused of failure to produce work-related material and ending her tour inappropriately on May 20, 2009. She again stated that she was not paid properly for May 6, 2009.

In a letter dated May 18, 2009, appellant alleged she was “not being allowed to be trained and work the functions of my job title.” She stated that she was subject to disparate treatment and harassment.

With respect to documentation, the record contains a Form 3971 (request for notification of absence) for annual leave from January 19 to 23, 2009, with a box “disapproved” checked and signatures dated January 16 and 22, 2009 from Ms. Mason. The form states that the employee must cancel one of the previous vacation picks. In a “step 2 decision” settlement dated July 17, 2009, it was agreed that appellant would be paid 3.92 hours to complete an 8-hour workday. The date was not identified. The settlement stated that it was made without prejudice to the position of either party. A grievance settlement dated November 5, 2008 indicated that a January 18, 2008 “emergency placement” was rescinded. The settlement stated that it was without prejudice to either party.

¹ Appellant indicated her pay was subsequently adjusted but the supervisor was not reprimanded.

In a letter dated June 24, 2009, Ms. Paladin stated that appellant had not been subject to harassment. She indicated that appellant's record had been flagged as "deems desirable" for documentation, as over the last year appellant had not worked for a full two-week period without taking some leave. The supervisor stated that there was no harassment and the allegations in appellant's letter dated June 8, 2009 were not supported by evidence. Appellant submitted witness statements that did not discuss the specific allegations.

In an undated report submitted on August 4, 2009, Dr. Kumar Moolayil, a psychiatrist, diagnosed severe major depression and opined that increased job stress had exacerbated the condition. Dr. Moolayil reiterated his opinion in an October 2, 2009 report.

By decision dated January 21, 2010, the Office denied the claim for compensation. The Office found no compensable work factors had been established.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.² This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³

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 the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁵ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁶

With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁸

ANALYSIS

Appellant has raised a number of allegations with respect to her claim for an employment-related emotional condition. She has not alleged that the actual performance of any specific job duty caused her emotional condition. The initial question is whether there are any compensable work factors that are substantiated by probative evidence.

In this case, appellant has generally alleged that she was subject to harassment and disparate treatment. As noted above, an allegation of harassment must be supported by probative and reliable evidence. Appellant did not submit evidence of harassment. She generally alleged that Ms. Robinson harassed her in 2008, without providing any supporting detail or evidence. With respect to Ms. Mason, appellant alleged that she was often rude to her and one time threw papers on her desk. While 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 a compensable work factor.⁹ For example, the raising of a voice during the course of a conversation does not warrant a finding of verbal abuse.¹⁰ While appellant may have felt the supervisor was being rude, the evidence of record does not establish a compensable work factor with respect to harassment or verbal abuse.

With respect to administrative matters, the evidence must establish error or abuse by the employing establishment. Appellant alleged that she was improperly placed on a "deems desirable" list for documentation of her absences. The employing establishment explained that appellant was utilizing some leave during every pay period. There is no evidence of error in this regard.

Appellant alleged that her leave was improperly denied and she was not paid properly for work performed. She specifically argued that a leave request dated January 16, 2009 was improper as her signature was forged on the form. The only evidence of record is the form itself,

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁷ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁸ *Helen P. Allen*, 47 ECAB 141 (1995).

⁹ *Judy L. Kahn*, 53 ECAB 321, 326 (2002).

¹⁰ *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

which denies appellant's leave request for January 19 to 23, 2009. Appellant indicated that she did subsequently receive approved leave. It is not clear whether she filed a grievance on this matter, but no probative evidence was presented of error or abuse by the employing establishment regarding leave requests. Appellant also alleged that she was not paid properly, and she referred to May 6, 2009 when she alleged she did not receive pay for eight hours of work. There is a grievance settlement dated July 17, 2009 finding she would be paid an additional 3.92 hours, although it does not specifically refer to May 6, 2009. In any case, the settlement is not an admission of error and does not establish error or abuse.¹¹

There is an allegation that false statements were made at a May 21, 2009 meeting by appellant's supervisors and she was unnecessarily disciplined. It is not clear what specific disciplinary action appellant felt was unnecessary, but no evidence was presented that the meeting itself was erroneous or abusive. As to false statements, appellant does not provide a detailed discussion and supporting evidence. Even if she was at work on May 6, 2009, the alleged statement from the supervisor was only that she did not recall seeing appellant at that time. There was no probative evidence of error or abuse with respect to a May 21, 2009 meeting. Appellant also appeared to allege in a correspondence to a supervisor that she was not being trained properly, without providing any additional detail or supporting evidence.

The record indicated that appellant was placed in an off-duty status on January 18, 2008 for conduct involving a verbal altercation with a coworker. The disciplinary action was rescinded in a settlement dated November 5, 2008. There is no admission or acknowledgment of error by the employing establishment, and the mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.¹²

The Board accordingly finds that appellant has not substantiated a compensable work factor in this case. There is no probative evidence of harassment, error or abuse in an administrative action, or any other compensable work factor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹³

CONCLUSION

The Board finds appellant did not establish an emotional condition causally related to compensable work factors.

¹¹ Absent an admission of error, a grievance settlement does not establish error or abuse by the employing establishment. *Kim Nguyen*, 53 ECAB 127 (2001).

¹² See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Richard J. Dube*, 42 ECAB 916 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

¹³ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 21, 2010 is affirmed.

Issued: March 17, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board