

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. BRACY and U.S. POSTAL SERVICE,
POST OFFICE, Mobile, Ala.

*Docket No. 96-1071; Submitted on the Record;
Issued April 7, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she developed an emotional condition in the performance of duty causally related to factors of her federal employment.

On March 24, 1995 appellant, then a 56-year-old customer service manager, filed a claim alleging that she developed an emotional condition due to stress resulting from a proposed change in her work schedule and location. The record reflects that in September 1983 appellant filed an earlier claim alleging that she suffered a disabling anxiety attack when a coworker put a live poisonous snake in her purse. Appellant's prior claim was accepted for temporary aggravation of anxiety disorder. Subsequent to her medical release to work in January 1985, appellant accepted the employing establishment's offer of a light-duty rehabilitation position. The rehabilitation position included night differential pay and Sunday premium pay in accordance with her regular position. In a narrative statement in support of her current claim, appellant alleged that she began suffering from extreme high blood pressure, spasms of the esophagus, anxiety attacks and nervous tremors immediately after the postmaster proposed a change in her work schedule, from reporting at 8:00 a.m. to reporting at 2:30 a.m. and a change in her work location to the building where she had suffered the traumatizing snake incident. Appellant stated that the person who had put the snake in her purse was still employed by the employing establishment and that she felt that her chances of encountering that person were far greater at the reassignment work site than at her present work site.

In support of her claim, appellant submitted several medical reports from her treating physicians. In a letter dated March 1, 1995, Dr. Daniel L. Koch, a clinical psychologist, recounted that he treated appellant in 1984 for a work-related illness and that in 1985, after months of treatment, she was returned to the workplace. He explained that when she returned to work it was agreed by all that she was to be placed in customer service and work Monday through Friday, 8:00 a.m. to 5:00 p.m. He added that this arrangement worked well for 10 years, and that during that time appellant did not require any additional treatment. In contemplation of the possible reassignment, however, appellant was now experiencing some of the symptomology

she displayed in 1984 to 1985. The physician concluded that he felt it would be in the best interest of appellant's health if her job assignment remained unchanged.

In a letter dated March 20, 1995, Dr. Koch stated that effective that day he was placing appellant on an indefinite sick leave status, and that she was filing a CA-2. He added that a full medical report would follow.

In a letter dated April 10, 1995, Dr. Koch stated that, as a result of appellant having been informed on February 13, 1995 of her proposed reassignment, she suffered extreme distress and it was necessary to remove her from work due to major depression, DSM-IV, 296.3. The physician added that appellant's personal life remained stable, but that the employing establishment's intent to return appellant to the work site which had been central to her 1983 to 1985 disability exacerbated her condition. He reiterated that he knew of no nonindustrial stress situations and that her condition was due to her proposed assignment to a workplace associated with prior trauma. Dr. Koch added that the proposed return of appellant to her former work site violated a work agreement entered into in January 1985 and concluded that appellant would be returned to work when the job assignment issue was resolved and appellant's depression abated.

In a letter dated April 25, 1995, the employing establishment contested appellant's claim. The postmaster acknowledged that he had discussed a new position with appellant, one involving a change in schedule and a move to the former building, but stated that the Mail Processing Center once located in the building in question and the place of employment of the person responsible for placing the snake in appellant's purse, had since been relocated to another area of the city. He stated that the new position was in a different operation and environment than the duties she previously performed in that building. In addition, the postmaster stated that, based on medical documentation produced by appellant, establishing that her medication schedule was incompatible with night shift hours, it was decided that she be allowed to remain in her present position.¹ Finally, the postmaster noted that in addition to the proposed change in position, appellant had also been the subject of a Postal Inspection Service investigation involving her alleged unauthorized receipt of premium benefits.

In a decision dated May 19, 1995, the Office of Workers' Compensation Programs rejected appellant's claim finding that she failed to establish that she developed an emotional condition in the performance of duty. The Office found that the incidents alleged, the proposed job change and the investigation into her entitlement to night differential and premium pay, constituted administrative or personnel matters and therefore were not compensable factors of employment.

On July 10, 1995 appellant requested reconsideration of the Office's May 19, 1995 decision. In support of her request, appellant submitted a narrative statement outlining the factors of her employment she believed to have caused her emotional condition. In her

¹ In a letter dated March 7, 1995, Dr. Donald B. Sanders, a Board-certified internist and one of appellant's treating physicians, stated that the sedative effect of the drug clonidine, which appellant was taking under his care, required her use of this drug only at bedtime.

statement, appellant stated that she did not think the job assignment proposed by the postmaster was a “possible” assignment, but believed it was an actual assignment to occur within five days of its proposal and believed it was in reprisal for having filed several Equal Employment Opportunity Commission (EEOC) claims. She again stated that she and the employing establishment had signed an agreement that she would never be assigned to the area where the incident occurred and that being faced with the thought of the assignment led to her current emotional state, as she was terrified at the thought of reporting to the site of her prior trauma, a building with no security guards, at 2:00 a.m., with only a few other employees on duty at that hour. Appellant added that the thought that the person responsible for placing the snake in her purse might be lurking around or stalking her was also terrifying. She explained that in addition to the possibility of actually encountering this person again, as this man worked in the registry section of the postal service he could easily place a snake or other object into the registered pouch, which she would be required to open on a daily basis. She felt that in her current state, this could cause her to have a heart attack. Appellant also stated that she had never been questioned about her differential and premium pay prior to her refusing the proposed job reassignment and she thought the investigation into this matter was also an act of reprisal. She added that while the visit from the postal inspector regarding her premium pay neither frightened nor intimidated her, after the postal inspector found no intentional wrong or criminal activity on her part, the postmaster continued to investigate the allegation, gathering statements from her co-workers and instituting disciplinary action against her. Appellant stated that the constant harassment was more than she could tolerate, had caused her health to deteriorate, and was designed either to cause her to retire or to have a complete nervous breakdown.

Appellant additionally recounted the circumstances of her 1983 disability and expressed her dissatisfaction with the restructuring the employing establishment underwent following her return to work in 1985. Appellant also cited several examples of what she believed to be harassment and prejudicial treatment, and added that stress in her employment had often necessitated that she leave work and seek medical attention.

In a letter dated September 21, 1995, the employing establishment responded to appellant’s allegations. The postmaster stated that, contrary to appellant’s allegation, he had looked into the matter of her premium pay prior to her refusing the proposed position, but had not discussed it with appellant. He added that, while he was aware of the fact that appellant had undergone a traumatic experience at the location under consideration for her reassignment, he believed that the environment was now totally different, as the mail processing unit had moved from the building and only the customer service section remained. He additionally noted that appellant regularly entered this building to attend weekly staff meetings, and had visited the plant manager on a number of occasions prior the mail processing unit moving. He added that appellant had never stated nor suggested that she was not to enter this location. The postmaster concluded that appellant had not been harassed, threatened or intimidated in any way, either with respect to the proposed reassignment or with respect to the issue of her premium and differential pay.

In a decision dated October 26, 1995, the Office denied modification of the prior decision finding that appellant had not established that she developed an emotional condition in the performance of duty.

Appellant requested reconsideration of the Office's October 26, 1995 decision. In support of her request, appellant submitted a narrative statement and several documents pertaining to her Merit Systems Protection Board (MSPB) claim against the employing establishment regarding the issue of her alleged unwarranted receipt of night differential pay. Appellant responded to the postmaster's statement that she had entered the site of her prior trauma on many occasions by explaining that, while she did enter the building weekly to attend staff meetings and visit the plant manager's office, these actions did not require that she enter the workroom floor. Appellant also recounted numerous other examples of what she believed to be harassment, discrimination and disparate treatment on both the part of the employing establishment and her fellow employees, including an incident in January 1995 involving a dead rattlesnake.

In a decision dated January 24, 1996, the Office found the evidence submitted in support of appellant's request for reconsideration insufficient to warrant modification of the October 26, 1995 decision.

The Board finds that appellant has not met her burden of proof to establish that she developed an emotional condition in the performance of duty causally related to factors of her federal employment.

The Federal Employees' Compensation Act² does not cover every injury or illness that is somehow related to one's employment. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. The disability is not compensable, however, when it results from such factors as an 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.³ Generally, an employee's emotional reaction to an administrative or personnel matter is not compensable. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.⁴

Appellant's primary complaint in this case, concerns her proposed reassignment to a new position located in a building where a prior traumatic incident occurred, which appellant asserted was in violation of a prior agreement that she never again be assigned to that building. To the extent that job reassignment is an administrative or personnel action, it is not compensable unless there is evidence of error or abuse. In this case, appellant provided no evidence that the employing establishment acted unreasonably or abused its discretion with respect to this matter. The record reveals that although this transfer to the site of the prior trauma was proposed, in response to appellant's request that she not be reassigned to that building, the employing establishment asked that appellant provide medical documentation from her treating physician regarding whether appellant could work at the proposed site. Subsequent to the submission by

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, 28 ECAB 125 at 129, 131 (1976).

⁴ *Norman A. Harris*, 42 ECAB 923 (1991); *Thomas D. McEuen*, 42 ECAB 566 (1991).

appellant of medical documentation establishing that her health would greatly suffer if she were reassigned, the employing establishment retracted the proposed reassignment and chose to let appellant remain in her current position. Regarding appellant's related assertion that she lives in fear that the person who placed the snake in her purse might again take action against her, and is distressed that the employing establishment did not act to discipline or restrain this person in any way, what disciplinary action an employing establishment chooses to take or not to take against another employee does not directly concern appellant's job duties, and therefore cannot be said to arise out of her employment. In addition, as there is no indication in the record that any additional acts have been perpetrated against appellant by the person in question during the 10 years following the original incident. Rather, the evidence suggests the individual does not work in the area of town in which appellant works. Appellant's concern constitutes a fear of future injury, which is not compensable.⁵

With respect to the issue of the employing establishment's investigation into appellant's alleged unauthorized receipt of night differential pay or premium pay, appellant also has not shown that the employing establishment erred or acted abusively with respect to this administrative action. Although appellant submitted evidence that she filed an MSPB claim with respect to this issue, as a decision had not been made with respect to this claim and her allegations are insufficient to establish that any error or abuse on behalf of the employing establishment.⁶

Appellant additionally asserts that she has been harassed and discriminated against by various coworkers and supervisors over a period of years following her return to work in 1985, including a second incident involving a snake and stated that fear and stress caused her, on many occasions, to leave work and seek medical attention, particularly for her hypertension. Actions by coworkers or supervisors that are harassing of a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.⁷ Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.⁸ However, as appellant did not specifically identify as to time, manner or place, any of the stressful incidents, which she asserts caused her to leave work and seek medical attention and failed to provide any supporting documentation, she has not established that these events in fact

⁵ See *Mary A. Geary*, 43 ECAB 300 (1991); *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

⁶ See *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁷ See *Marie Boylan*, 45 ECAB 338 (1994) (holding that allegations of an emotional reaction to incidents such as verbal altercations with coworkers that occurred while the claimant was performing official representational functions could constitute compensable factors of employment); *Gregory J. Meisenburg*, 44 ECAB 527, 529 (1993) (holding that it was an error for the Office to find that the claimant's reaction to comments made by coworkers concerning his request for a change in work location "does not come within the coverage of workers' compensation"); *David W. Shirey*, 42 ECAB 783, 795 (1991) (holding that the claimant had alleged a compensable factor of employment by asserting that he was called "sucker" by coworkers, as he encountered this condition in the performance of his regular or specially assigned duties).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

occurred. Additionally, in extensive comments in letters dated April 5 and September, 21, 1995 the employing establishment specifically contradicted appellant's assertions of harassment, hostility, error or abuse. Accordingly, on the basis of the evidence presented, the Board finds that appellant has failed to substantiate harassment, hostility, error or abuse on the part of the employing establishment.

As appellant has not established any compensable factors of her federal employment that she implicates in causing or contributing to the development of her emotional condition appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Accordingly, the decisions of Office of Workers' Compensation Programs dated January 24, 1996 and October 26 and May 19, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 7, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member