

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA S. MADDUX and U.S. POSTAL SERVICE,
POST OFFICE, Sun City West, Ariz.

*Docket No. 96-1392; Submitted on the Record;
Issued April 27, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On August 8, 1995 appellant, then a 41-year-old city carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she developed depressive nervosis due to factors of her federal employment. Appellant submitted a narrative statement in support of her claim. She attributed her condition to incidents beginning upon her return to work from a back injury. She alleged that her coworkers took it upon themselves to decide whether or not her back hurt her bad enough to restrict her to two hours work per day, or if her back was hurt at all, and they continuously made comments about her job performance. Appellant stated she first became aware that her condition was job related on April 18, 1995. Appellant stopped work on April 18, 1995 and has not returned.

Appellant specifically stated that carrier Joyce Meyers told her supervisor, Bonnie Cross, that she was walking around when in fact she had gone to the drinking fountain to take a pill. She also stated that she had talked to supervisors, Bonnie Cross, Judy Blakeman and Joe Kunowski during this period. Appellant states that when she went to her supervisor to complain about the comments made by her coworkers, she was told to "ignore them." She also alleges that comments were made by Ray Baca, Joyce Meyers and "their followers" about her. Appellant stated that she talked to Phil Kampf about the situation and he stated that he would talk to Ray Baca, but the comments continued. She noted that Billie Provost apologized to her after a comment made by Ray Baca about her.

By letter dated September 28, 1995, the Office of Workers' Compensation Programs requested additional information from appellant including a statement describing specific employment factors which she believed led to her condition and supporting medical evidence.

In a report dated October 25, 1995, Dr. James R. Hicks, appellant's treating physician, diagnosed major depression, single episode, rule out anxiety disorder and grief and loss issues. Dr. Hicks first saw appellant on June 12, 1995. He reported:

“[Appellant] gave a history of having significant work stress (as previously described), also other stresses including financial, coping with an improving back injury, on-going numbness in her left lower jaw following jaw surgery in 1992, some family problems, and the death of her mother in 1987 and her father in 1989, chronic fatigue syndrome, and recent move from Phoenix to California with lack of support systems in this city other than her sister. She gives a history of no prior episodes of depression, but states that she has had some depression since 1987, but especially since November 1994, associated with multiple vegetative symptoms including changes in sleep, energy, motivation, interests, appetite, fatigue, functioning, concentration, crying spells, anhedonia, decreased self-esteem (secondary to coworker's alleged criticism), increased frustration, thoughts of death but no thoughts of suicide at the time I first saw her. She denied manic symptoms, but does have some history of increase in anxiety, mainly situational and related to her job situation.”

In a letter dated November 21, 1995, the employing establishment provided a summary of the findings of their investigation into appellant's complaint and submitted statements from employees, leave records and records relating to appellant's accepted back injury claim.

In a statement dated November 14, 1995, Judy Blakeman, supervisor, customer services, noted that while appellant “was casing mail on 7516 and 7520, there were numerous complaints from the regular carrier and carriers that carried bumps or relays to [appellant] as to casing errors.” Ms. Blakeman also indicated that she was not present when appellant's performance was addressed and that appellant left work without informing any supervisor.

In a statement dated November 14, 1995, Mark W. Strong, postmaster, noted that appellant “has had personal problems since I have been assigned to Sun City.” Mr. Strong stated:

“Shortly after my arrival in Sun City, three years ago, [appellant] came to me regarding a transfer from clerk craft to carrier craft. She had developed attendance problems and was resisting her upcoming assignment to Tour I in the clerk craft. We granted her transfer with a commitment from her to straighten out her work and attendance problems.

“She continued to have attendance problems, as well as other problems with her work performance after being granted the transfer. These problems were addressed by her supervisor and disciplinary action was initiated by her Supervisor Judy Blakeman.

“Shortly after this, [appellant] had her accident and has been off work for one reason or another since. [Appellant] returned for short periods after the workman's compensation claim had been exhausted. She continued to perform

poorly and took sick leave every chance she could. *At no time* during this period did she bring to my attention any harassment by employees or supervisors, nor did the union bring it to my attention.”

In a report dated November 14, 1995, Bonnie Cross, supervisor, customer service, detailed interviews she and Billie Provost, union steward, conducted with several Sun City West carriers. Patti Peet and Sarah Stahl indicated neither of them had heard any comments or remarks made to appellant by letter carriers, other than remarks/comments appellant stated had been made to her by Joyce Meyers and Ray Baca. Billie Provost indicated that he had overheard a remark made by Ray Baca, but that appellant was not named. Mr. Provost stated that he apologized to appellant later when “Patti Peet told me how upset Linda was about the comment” because he “was the Union Steward and should not have laughed at Ray’s comment.” Ray Baca stated that he had not made any comments directed at appellant, but that he had made a comment regarding his floor being clean. Phil Kampf stated appellant had talked to him about comments people made which upset her. Joyce Meyers stated that she had not made any comments to or about appellant. Ms. Meyers also stated that she did not believe that appellant was harassed by her, other carriers or management. Joe Kunowski stated that on April 18, 1995 appellant informed him that she needed to leave as she could not work. Mr. Kunowski could not recall the reason for appellant’s departure, but recalled that she was very angry. Mr. Kunowski also stated that appellant had spoken to him about carriers commenting about her miscased mail, walking around, and that she was never at work. As a carrier, Mr. Kunowski noted that he recalled appellant’s “poor attendance, miscased mail, and that she frequently walked around the office.” Three other carriers were also interviewed and denied ever hearing harassing comments made to or about appellant by carriers or management.

In a letter dated November 14, 1995, Ms. Cross stated that she had talked to appellant “about walking around and talking to other carriers” as this affected appellant’s work performance and disrupted the carriers. Ms. Cross also noted “in reference to Linda’s statement that carriers were making comments to her, day after day, week after week, and month after month. As [appellant’s] attendance will show, she wasn’t there enough to make that statement.”

In a report of appellant’s work schedule when she was supposed to resume work on November 21, 1995 with restrictions, it was noted that from “PP [pay period] 24 in 1994 to PP [pay period] 16 in 1995, she has worked 187 hours and that her last day of work was April 18, 1995.

In a statement dated November 14, 1995, Carla West, manager, indicated that she was unaware of appellant being “mistreated at any time by anyone in my office.” Ms. West stated that she was aware appellant was having problems with her work due to the fact that carriers were picking up misdelivered mail and she was having problems casing mail.

In an undated letter, Ms. Cross stated that on April 18, 1995 she discussed complaints she had received about miscased mail with appellant and Phil Kampf. Ms. Cross noted, “I told her that on one occasion a carrier showed me approximately one foot of miscased mail. [Appellant] had no excuse, but did say that she did not know the routes very well. I asked her if there was anything I could do help her, and she replied ‘no.’”

A summary of appellant's 1995 leave records indicates that appellant took 20.25 hours of scheduled annual leave, 38.11 hours of unscheduled annual leave, 709.98 hours of scheduled leave without pay, 403.56 hours of unscheduled leave without pay, 56 hours of scheduled sick leave and 30 hours of unscheduled sick leave.

In a letter dated December 19, 1995, Dr. Hicks noted that appellant was under his care for major depression, single episode. Dr. Hicks stated that "upon initial presentation in his office on June 12, 1995, appellant indicated that her symptoms had greatly escalated secondary to harassment and criticism inflicted upon her by coworkers. Dr. Hicks further noted that "if a patient is predisposed to a condition such as depression, it would be likely that the hostile environment she described could aggravate and escalate her symptoms." Dr. Hicks opined that it appeared that appellant's "current diminished level of functioning is directly related to her workplace environment."

By decision dated December 29, 1995, the Office rejected appellant's claim on the basis that the evidence was insufficient to establish that her condition was due to employment factors. The Office found that appellant's allegations and perceptions of harassment were unsupported by the evidence of record. The Office next found that Dr. Hicks' reports do not contain a detailed description of the events, but instead appear to rely upon appellant's statements described in her initial statement. The Office also found appellant had failed to submit rationalized medical evidence in support of her claim.

In a letter dated January 10, 1996, appellant requested reconsideration of the denial of her claim and restated her allegations of harassment.

In a nonmerit decision dated January 18, 1996, the Office denied appellant's request for reconsideration of the prior decision as the evidence submitted for review was found to be repetitious and insufficient to warrant review of the prior decision.¹

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

To establish her 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.² Rationalized medical opinion evidence is medical evidence

¹ Following the date of the appeal in April 1996, the Office issued a subsequent nonmerit decision on June 7, 1996, which the Board finds to be null and void. The Board has held that the Office does not have jurisdiction to issue a decision while the case is pending before the Board on the same issue; see *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). The Board notes that appellant has submitted new evidence. The Board cannot consider this evidence, as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

Appellant alleged harassment, mentioning comments made by her coworkers, Ray Baca, Joyce Meyers and their followers. Appellant also alleged that the supervisors, Bonnie Cross, Judy Blakeman and Joe Kunowski were aware of the situation, but did not take any measure to stop the comments made about appellant's work habits. Actions of an employee's supervisor or coemployee which the claimant characterizes as harassment may constitute a compensable factor of employment. However for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact occur.⁶ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁷ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.⁸ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁹

In the present case, the Board finds that appellant has not supported her various allegations of harassment with sufficient probative evidence to substantiate that she was harassed by coworkers or her supervisors. Appellant stated that Billie Provost, a union steward, apologized to her about a comment made by Ray Baca. Appellant alleged harassment by

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁷ *See Lorraine E. Schroeder*, 44 ECAB 323 (1993); *Sylvester Blaze*, 42 ECAB 654 (1991)

⁸ *William P. George*, 43 ECAB 1159 (1992).

⁹ *See Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

coworkers who made comments about her job performance. She also stated that she complained to her supervisor about the comments made by her coworkers. The Board notes that Mr. Provost stated that he did apologize to appellant about laughing at a comment made by Ray Baca, but noted that Mr. Baca's comment did not name any individual. Mr. Provost said he apologized because he was told appellant was upset about the comment. Appellant has not submitted sufficient evidence concerning harassment by coworkers or detailed the comments made by them to substantiate when these comments occurred. Therefore, the evidence of record is insufficient to establish this allegation. Similarly, with regard to her allegations that she complained to her supervisors about the comments made by her coworkers about her work, appellant has not submitted any evidence to support her allegations. Specifically, Ms. Blakeman, Ms. Cross and Mr. Kunowski deny that appellant complained to them about comments made by her coworkers about her work performance.

The Board notes that appellant's allegations regarding stressful factors of her employment either did not arise from the performance of her duties, or were not supported by the evidence of record.

A claimant seeking benefits under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that he sustained an injury in the performance of duty, as alleged. As appellant had alleged no other compensable factors of employment as causative of her emotional condition, he has failed to meet her burden of proof to establish that he sustained an emotional injury in the performance of duty.

Additionally, appellant submitted no medical evidence which identified any specific factors of her employment that Dr. Hicks felt were responsible for creating appellant's stress. Dr. Hicks noted in his reports that appellant gave a history of significant work stress, but did not specifically detail the incidents. Dr. Hicks failed to provide a rationalized medical opinion supporting that appellant's stress reaction was causally related to any identifiable, compensable factor of her employment.

Consequently, appellant has failed to establish that she sustained an emotional condition in the performance of her duty, causally related to factors of her employment.

The decisions of the Office of Workers' Compensation Programs dated January 10, 1996 and December 29, 1995 are affirmed.

Dated, Washington, D.C.
April 27, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member