U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANNE P. NAUFVILLE and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, N.Y.

Docket No. 96-1511; Submitted on the Record;
Issued April 22, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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

On November 8, 1995 appellant filed a claim for a traumatic injury alleging that on that date she sustained stress and aggravation due to factors of her federal employment. Appellant stopped work on November 8, 1995. By decision dated March 18, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. In the accompanying memorandum to the Director, incorporated by reference, the Office found that appellant had not alleged a compensable factor of employment.

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 his 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

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.[3] 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.[4]

In the present case, appellant has alleged that she sustained an emotional condition as a result of verbal abuse from her supervisor, Mr. George L. Baez, on November 8, 1995. Specifically, appellant related that on November 8, 1995 Mr. Baez told her, regarding her need for overtime to complete her route on previous days, that "even a retarded person can rack the route." In a statement dated November 24, 1995, Mr. Baez related that on November 8, 1995 he asked appellant and Ms. A. Livingston, a supervisor, into his office to discuss appellant's performance on November 4, 1995. Mr. Baez related that he did not call appellant retarded but rather stated, "A retard could do the minimum standard but being that you are an able carrier we expect more from you." In a statement on the reverse side of appellant's claim form, Ms. Livingston related that appellant "was not aggravated" but "was only called into the office and spoken to" and indicated that she could not verify appellant's statement.

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 Act.[5] Appellant's perceptions of verbal abuse alone are not sufficient. Corroborating evidence must establish that the utterances in question occurred as alleged. In the instant case, Mr. Baez denied calling appellant retarded, although he acknowledged making a comment to appellant about her route. Appellant has not explained how an isolated comment of this nature would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[6] Thus, appellant has not established a compensable factor under the Act with respect to the

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

[3] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

[4] *Id.*

[5] *See Leroy Thomas, III*, 46 ECAB 946 (1995).

[6] *See Alfred Arts*, 45 ECAB 530 (1994).

November 8, 1995 incident and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.[7]

The decision of the Office of Workers' Compensation Programs dated March 18, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 22, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[7] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see supra* note 3.