

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA SCHULSTADT and U.S. POSTAL SERVICE,
POST OFFICE, Chipley, Fla.

*Docket No. 95-1929; Submitted on the Record;
Issued February 4, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish an emotional condition due to compensable work factors.

The Board has duly reviewed the record in the present appeal and finds that appellant has not met her burden of proof to establish an emotional condition due to compensable work factors.

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 work 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 employee's fear of losing one's job or frustration from not being permitted to work in a particular environment or to hold a particular position.² Generally, the only factors of employment which will bring a claim within the scope of the Act are those that relate to the duties the employee was hired to perform.³ The Board has held that where a claimant

¹ 5 U.S.C. §§ 8101-8193.

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *See Merriett J. Kauffman*, 45 ECAB 696 (1994).

demonstrates a heavy work load or overwork as part of their job requirements, reactions from the heavy workload is compensable.⁴ Actions of the employing establishment in administrative or personnel matters however, do not generally fall within coverage of the Act, unless the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters.⁵

On September 8, 1992 appellant, then a 28-year-old superintendant of postal operations, filed a claim for an emotional condition due to her federal employment. Appellant had been placed on administrative leave on July 31, 1992, as a result of an investigation into specific allegations of her improper conduct both between her and the Postmaster and in her management duties as a superintendent of postal operations.⁶ As a result of the investigation, the Postmaster resigned and appellant remained in a leave without pay status until October 9, 1992, when she was issued a letter of removal based on the charges of unacceptable conduct and job performance. Pursuant to a settlement agreement following an appeal before the Merit Systems Protection Board, appellant was transferred effective January 9, 1993 to the Ebro facility, with no actual loss in pay and no back pay for the period she was on administrative leave. Appellant claimed continued stress after her transfer to the Ebro facility due to poor working conditions. After an Occupational Safety and Health Administration inspection, improvements in the working conditions were made, but appellant alleged continued dislike from others with her aggressive and challenging nature. The allegations of stress from her employment at the Chipley facility, where she worked from January 1986 until July 31, 1992, are fully set forth in the January 19, 1994 decision of the Office of Workers' Compensation Programs' hearing representative. The gist of appellant's claim was that she did not feel the disciplinary action taken against her was warranted. Appellant acknowledged having had a sexual relationship with the Postmaster, and claimed that after she ended the relationship with the Postmaster in February 1989, the Postmaster was abusive with her and harassed her. She implicated the Postmaster as the person who gave her instructions to perform activities which later were used against her in the investigation and the attempt to remove her. Appellant alleged prior harassment and discrimination in her prior position as a clerk and indicated that she felt a managerial position

⁴ *O. Paul Gregg*, 46 ECAB ____ (Docket No. 94-635, issued March 20, 1995) (where the Board held that appellant demonstrated that changes in the employing establishment procedures resulted in an increased work load in appellant's regular day-to-day duties and constituted a compensable factor of employment; *Frank A. McDowell*, 44 ECAB 522 (1993) (where the Board held that appellant had not established that the employing establishment was understaffed and that this resulted in overwork, but that had he submitted supporting evidence, the factor would be compensable).

⁵ *See See Elizabeth W. Ensil*, 46 ECAB ____ (Docket No. 93-1592, issued March 16, 1995) (finding that the assignment of work duties and the assessment of work performance while generally related to the employment are administrative functions of the employer, and not duties of the employee); *See also, James W. Griffin*, 45 ECAB 774 (1994) (with respect to reassignments and the denial of work requests); *Margreate Lublin*, 44 ECAB 945 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁶ The investigation resulted from complaints regarding the management style and alleged abuses of power by appellant in her management of the employees. These complaints alleged among other things, that appellant had an affair with the Postmaster and was promoted because of this relationship. While in her position as superintendent of postal operations, the employees alleged that she falsified time records with respect to herself and another employee, she used the telephone for personal long distance calls, she was absent from her work on one occasion on Saturday when she claimed she worked, and her management style was abusive.

would allow her to overcome this harassment. She alleged that the harassment from others continued because of her gender, and that the Postmaster continued to make unwanted advances towards her and abused her physically by such actions as squeezing her rings into her hands. Appellant noted that she worked overtime a considerable amount without being paid, but stated that the records to support her overtime work had been held by the postal inspector following the investigation. She noted that her written notes concerning the Postmaster's unwanted advances were also held by the postal inspector, and she was unable to recover these notes following the investigation. Appellant submitted a May 1993 letter from the employing establishment indicating that her personal notes obtained as part of the investigation had been destroyed. In support of her claim that she faced gender discrimination and harassment, she submitted a signed statement by the Postmaster relating to a conversation he overheard with another coworker who spoke about how appellant wore her hair and the possible effect it had on her managerial ability. She also submitted a statement dated October 12, 1993, from a female Postmaster who noted that during an informal audit between February and July 1989, she witnessed appellant move away from the Postmaster when he placed his hand on her buttocks. The female Postmaster noted statements made by others concerning the general knowledge of problems at the Chipley facility in 1991 prior to any investigation, and repeated remarks made about appellant's past sexual conduct after her reassignment in January 1993.

The statements submitted by the employing establishment included statements from the employees which prompted the investigation in July 1992, as well as statements from others at the employing establishment and at other facilities involved in appellant's training. The statements did not indicate that appellant complained at any time about the continued advances of the Postmaster after her initial attempt to end the relationship in February 1989, nor did the statements show that appellant was treated unfairly by the Postmaster or others. In a sworn statement, the prior Postmaster indicated that he was sexually involved with appellant from late 1988 until late 1990. He addressed the shortfall of appellant's account at one point, and addressed her use of overtime. With respect to the overtime usage, he noted that appellant had recorded a substantial amount of overtime between 1989 and 1991, with some of the overtime justified and some of it he "could have done without." The former Postmaster noted appellant's tendency to set her own schedule, and when he made comments about overtime usage, the usage would be curtailed for a short period, but he did not get overly involved. He indicated that he feared appellant would inform his wife about the affair.

The Office found, in decisions dated February 1, 1993 and January 19, 1994, that appellant had not established a factual basis for her claim of an emotional condition, due to compensable factors of employment.

The Board, having reviewed the evidence fully, adopts the findings of the hearing representative in his January 19, 1994 decision, setting forth those factors which are not compensable by their nature and those factors which were not established by the record. The evidence does not establish her claims for harassment or stress from compensable work factors in her positions as a clerk, as a superintendent of postal operations at the Chipley facility, or her subsequent position at the Ebro facility. Because of the two separate versions of when appellant's relationship ceased with the Postmaster, the letter from the female Postmaster is not sufficient to establish unwanted advances during a period appellant alleged the relationship was

over. She submitted no other witness statements to support her claim for harassment at work. The disciplinary action taken against her in the fall of 1992 was supported by witness statements obtained through an investigation, and while the disciplinary action was reduced to a suspension, the Board has held that lessening or reducing disciplinary action does not establish abuse or error with respect to the action.⁷

With respect to the evidence submitted by appellant and her representative after the January 19, 1994 decision of the Office hearing representative, the Board finds that the evidence does not establish “required” overtime work for which she was not paid, nor does it establish the lack of receipt of material from her personnel file pursuant to her requests under the Freedom of Information Act.

The decision of the Office of Workers’ Compensation Programs dated February 17, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 4, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁷ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).