

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE KING-ROBERTS and U.S. POSTAL SERVICE,
POST OFFICE, Mobile, Ala.

*Docket No. 95-2696; Submitted on the Record;
Issued February 12, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

On January 31, 1994 appellant, then a 42-year-old letter carrier, filed a claim for an occupational disease, Form CA-2, alleging that in November 1993 she sustained stress reaction, anxiety and depression resulting from abusive treatment from her supervisor, Ron McCaskill and the Postmaster, James Salter. Appellant had previously filed an occupational claim for a psychiatric condition resulting from her employment occurring before August 7, 1992, No. A6-552372, which the Office of Workers' Compensation Programs rejected and appellant appealed to the Board. Appellant also filed a claim for a right shoulder injury, No. A6-544477, which was accepted.

Appellant submitted numerous documents alleging that she was abused, discriminated against, or harassed by her supervisors, some of which consist of grievances filed with the Equal Employment Opportunity Commission (EEOC). To cite some examples of problems appellant alleged with management, on January 20, 1994 appellant alleged that she was discriminated against when Mr. McCaskill and Mr. Salter took her into the station manager's office and subjected her to extreme disparate treatment, threats, false accusations and verbal abuse. An undated EEOC investigation report stated that on June 25, 1993 appellant had asked some carriers to take pro-life bumper stickers off their cars and when they refused, appellant had a verbal altercation with one of them a few days later and told them that she was going to inform the carrier's spouse that she was having an affair with someone else. Mr. McCaskill stated he called appellant into his office on the date of the verbal altercation and told her in the presence of the shop steward that she was disruptive and that she needed to correct her attendance problem else she might lose her job. Mr. McCaskill denied that he discriminated against appellant. Appellant was informed of management's response and her appeal rights.

On a grievance worksheet dated April 14, 1994, appellant requested that a 14-day suspension she was ordered to undergo for insubordination be withdrawn. Her request was denied, however, because she failed to follow her manager's orders during a predisciplinary

counseling session. The manager had told her to go back to the work area and she filled out a Form 3971, punched the time clock and left work.

In a complaint dated November 23, 1993, appellant alleged that she was discriminated against on September 3, 1993, when she was denied the opportunity to serve as an ad hoc trainer, when she was not selected for a supervisor position, at the airport annex, her opportunity to obtain an ad hoc trainer position, was reduced in violation of a March 1993 EEOC settlement, when two additional positions for ad hoc trainers were posted and she was watched while she worked while others were unmonitored. Mr. McCaskill denied ever discriminating against appellant. He stated that as far as he knew she served in the ad hoc trainer position when it was her turn, he had nothing to do with her not being awarded the supervisor position at the airport annex, he had nothing to do with the additional posting of the ad hoc trainer positions, as that was the division of human resources' responsibility and that if he observed a work deficiency, he addressed it with the appropriate employee. Mr. Johnston, a human resources specialist, confirmed that appellant did not miss her ad hoc trainer rotation around September 3, 1993. Appellant also alleged that on November 26, 1993 Mr. McCaskill, backed by Mr. Salter, placed her under a "gag order," meaning that she was not to talk to other employees about union business, EEOC complaints and their personal lives and could only contact a shop steward through management, which caused her great emotional distress. Mr. McCaskill stated that during the meeting he told appellant that she was disrupting the work force with her conversations with her coworkers. Mr. Salter denied being a part of that discussion.

In an investigative report by the employing establishment on July 29, 1993, appellant stated that she had been threatened when poison was placed in her flat tray, stating that a "number of people in the Office could have done this." Mr. McCaskill stated that the poison to which appellant referred was ant spray, which was used around the office to help control pests. Appellant later stated that it was probably not a threat but harassment. The station master had the incident investigated. Appellant also stated that Mr. McCaskill had taken some post-it notes and newspaper articles off her cases and ordered her out of the Office. Mr. McCaskill stated that he had instructed everyone to take the post-it notes off their cases several months earlier and he removed appellant's post-it notes because she had not complied.

Appellant submitted medical evidence to support her claim consisting of a report dated February 22, 1994, from Dr. Donna Earshaw, a psychiatrist and reports dated November 30 and December 10, 1993, January 10 and May 27, 1994, March 3, March 20 and June 28, 1995 from Dr. Koch, a clinical psychologist. In her February 22, 1994 report, Dr. Earshaw evaluated appellant's ability to work and stated that appellant should be placed in a more neutral environment where she would be treated in a consistent manner with the other employees and not subject to specific restrictions on her speech, interactions and movement.

In his May 27, 1994 report, Dr. Koch referred to a work incident on May 9, 1994 where appellant had a verbal altercation with Mr. McCaskill, in which he forbade her to speak about certain matters and she had to leave work. Dr. Koch stated that it was necessary for appellant to be placed in a more neutral workplace.

In a report dated March 3, 1995, Dr. Koch stated that appellant reported sexual harassment at work and was suffering a severe emotional reaction to her situation.

On March 20, 1995 Dr. Koch stated that the conflict in the workplace had worsened and he placed appellant on indefinite leave status.

In his June 28, 1995 report, Dr. Koch considered appellant's history of injury, performed a physical examination and noted that appellant was experiencing violent impulses and numerous somatic complaints related to pressure at work. He stated that appellant was experiencing irritable bowel syndrome, headaches, memory problems, insomnia with sleep onset problems, early morning waking and confusion of her thinking. Dr. Koch stated that these symptoms were not related to any stress in her life that he could identify other than conflict in the workplace. He diagnosed that appellant was suffering from depression and anxiety based on a clinical and psychometric evaluation and restated that she should be assigned to a more neutral work environment or take steps to assure that appellant's station management treated her in the same fashion as all other station employees were treated. Dr. Koch stated that "no doubt" appellant's orthopedic condition which involved limitations in the workplace as well as her chronic pain contributed to her stress. He also diagnosed acute distress disorder secondary to harassment in the workplace.

The Office denied appellant's claim in decisions dated November 18, 1992, December 6, 1993, January 14, May 16 and December 15, 1994. On July 1, 1995 appellant requested reconsideration of the Office's decision. By decision dated July 18, 1995, the Office denied appellant's claim, stating that the evidence of record failed to establish that appellant's emotional condition arose out of factors of federal 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. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the conditions for which she claims compensation were caused or adversely affected by factors of his federal employment.¹ This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition or conditions for which he claims compensation. This burden also includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background of the employee, which shows a causal relationship between the conditions, for which compensation is claimed and the implicated employment factors or incidents.² An alleged employment-related emotional condition is compensable, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by the employment or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation.³ Perceptions and feelings alone are not compensable.⁴ If the Board finds that appellant's allegations are unrelated, to the employee's regular or specially-assigned work duties, they do

¹ *June A. Mesarick*, 41 ECAB 898, 907 (1990); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

² *June A. Mesarick*, *supra* note 1 at 908 (1990); *see Walter D. Morehead*, 31 ECAB 188, 194 (1979).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

not fall with the coverage of the Act, unless the evidence discloses error or abuse on the part of the employing establishment.⁵

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁶ The issue is not whether the claimant has established harassment or discrimination under standards applied by the EEOC. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury, arising in the performance of duty.⁷

The Board finds that appellant has failed to establish that she suffered an emotional condition in the performance of duty, as alleged.

The numerous documents contained in the record do not establish that appellant was discriminated against, harassed or abused by management. Many of the events such as management's disciplining appellant were not part of appellant's regularly assigned duties and do not constitute factors of employment.⁸ Further, appellant has not shown management abused its discretion in handling the alleged incidents. For instance, management investigated the bumper sticker incident and Mr. McCaskill advised appellant that she must not disrupt her coworkers. This was reasonable under the circumstances. Similarly, regarding appellant's allegation that Mr. McCaskill took the post-it notes and newspaper off her cases, Mr. McCaskill said appellant had not complied with his request to do so which he made to all workers several months earlier. Again, management showed no abuse of appellant. Regarding the ad hoc trainer position appellant wanted, appellant did not establish that she did not obtain the position. Mr. McCaskill and another member of management asserted that appellant, filled the position when her rotation became due and Mr. McCaskill stated that the posting of additional ad hoc trainer positions and her obtaining a supervisory position in the airport annex was outside his domain. Further, appellant's not obtaining a supervisory position, is not compensable as not obtaining a sought after position does not constitute, a factor of employment and appellant showed no evidence of discrimination. Mr. McCaskill's monitoring of appellant's work is an administrative function of the employer and is not compensable where, as in this case, no abuse was shown.⁹ Appellant did not show that her finding a can of ant spray on her tray, constituted an abuse by management who, in response, conducted an investigation. Mr. McCaskill's instructing appellant to go to her work station during a predisciplinary hearing was also reasonable.

Moreover, the medical evidence appellant presented consisting of Dr. Earnshaw's and Dr. Koch's opinions does not establish appellant's depression, anxiety and acute distress disorder resulted from her employment. In her February 22, 1994 report, Dr. Earnshaw stated

⁵ *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997); see *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

⁶ *Michael Ewanichak*, 48 ECAB ____ (Docket No. 95-451, issued February 26, 1977); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁷ See *Martha L. Cook*, 47 ECAB ____ (Docket No. 95-429, issued December 6, 1995).

⁸ See *Barbara J. Nicholson*, 45 ECAB 803, 809-10 (1994).

⁹ *Daryl R. Davis*, 45 ECAB 907, 911 (1994).

that appellant should be placed in a more neutral environment but did not address how appellant's emotional condition resulted from her employment. In his March 3, 1995 report, Dr. Koch generally stated appellant was suffering a severe emotional reaction to sexual harassment at work and that there seemed to be no other source of conflict in her life causing her stress but did not cite specific examples of incidents at work which contributed to appellant's emotional condition. Although in his May 27, 1994 report, he mentioned a verbal altercation she had with Mr. McCaskill, in which Mr. McCaskill told her not to talk about certain matters, Dr. Koch did not specifically state how this incident caused appellant's stress. Further, that incident was not a compensable factor since it was not shown management abused its discretion in disciplining appellant. In his June 28, 1995 report, Dr. Koch stated appellant should be assigned a more neutral environment but did not explain how appellant's depression, anxiety and acute distress disorder was causally related to her employment. His opinion that appellant's work restrictions and pain due to her shoulder impingement, contributed to her stress relates to appellant's claim for her shoulder injury and is not relevant to this claim. The medical evidence is therefore, not sufficiently rationalized to establish a causal relationship between appellant's emotional condition and any factors of employment. Inasmuch as neither the factual, nor medical evidence establishes that appellant's emotional condition arose from factors of her federal employment, appellant has not met her burden of proof.

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 18, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 12, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member