

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN J. MATHRE and U.S. POSTAL SERVICE,
POST OFFICE, Astoria, Oreg.

*Docket No. 96-2125; Submitted on the Record;
Issued July 23, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in rescinding acceptance of appellant's claim for an emotional condition causally related to factors of her federal employment.

In the present case, appellant filed a claim on November 18, 1991, alleging that she sustained a stress condition causally related to her federal employment. Appellant described the incidents she believed contributed to her condition in a statement dated November 20, 1991. Appellant stated that she was subjected to unwanted sexual advances from a supervisor, Mr. Kinder, commencing in 1981. According to appellant, she began dating a coworker in 1981, and then she became subject to additional harassment and abusive behavior from Mr. Kinder. Appellant asserted that she was subject to excessive street observation by Mr. Kinder during 1989, as well as being followed when she was in the office. She described specific instances when she was observed on her route. Appellant also indicated that she was denied a transfer request.

In a memorandum dated January 29, 1993, an Office claims examiner noted that a meeting was held in February 1990, at which both a management and union representative attended, discussing Mr. Kinder's street observations of appellant. The Office found that appellant had documented nine street observations during a five-month period, that Mr. Kinder had failed to directly respond to any one of them, and that the observations apparently stopped after the February 1990 meeting, all of which lent further credence to appellant's allegations. The Office accepted the claim for adjustment disorder with mixed emotional features.

In a decision dated March 13, 1995, the Office rescinded acceptance of the claim. The Office found that the evidence did not establish error or abuse by the employing establishment regarding street observations, nor was there any probative evidence establishing a compensable employment factor as contributing to an emotional condition. Appellant requested a hearing,

which was held before an Office hearing representative on August 23, 1995. By decision dated April 8, 1996, the hearing representative affirmed the March 13, 1995 decision.

The Board has reviewed the record and finds that the Office met its burden in rescinding acceptance of the claim.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation. To justify rescission of acceptance, the Office must establish that its prior acceptance was erroneous based on new or different evidence or through new legal argument or rationale.¹

With regard to street observations of appellant by her supervisor, it is well established that this is an administrative function of the employer,² rather than a duty of the employee, and it will be a compensable factor only if there is evidence of error or abuse by the employing establishment.³ In this case the Office apparently made a determination, as evidenced by the January 29, 1993 memorandum, that the street observations were abusive or erroneous. In support of this finding the Office noted the lack of a direct response to the reported observations alleged by appellant, a February 1990 meeting involving both union and management, and the reduction of observations after the meeting.

The record does contain additional relevant evidence of the issue of street observations that was submitted after the acceptance of the claim. The supervisor, Mr. Kinder, submitted a statement discussing the specific dates of observation alleged by appellant. Moreover, summaries of meetings dated February 9 and 26, 1990 were submitted. The evidence submitted does not establish error or abuse with respect to street observations. For example, the summary of the February 26, 1990 indicates that with regard to the suspected multiple street observations, there would be “an effort to acknowledge the other person,” and the supervisor “would let them [carriers] know in the office in passing as to why they were in area.”⁴ This is consistent with statements from other attendees at the meeting. It therefore appears that there was an agreement reached as to street observations of carriers. There is no indication, however, that any findings of error or abuse by the supervisor were made. An agreement as to an administrative matter does not itself establish error or abuse.⁵ The Board finds that the probative evidence of record does not establish error or abuse by the employing establishment in this case.

The Office initially accepted the claim based on a finding of error or abuse with respect to street observations by appellant’s supervisor. The submission of additional evidence on the

¹ *Curtis Hall*, 45 ECAB 316, 322 (1994).

² *See William P. George*, 43 ECAB 1159 (1992); *Artice Dotson*, 41 ECAB 754 (1990).

³ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Sharon R. Bowman*, 45 ECAB 187 (1993).

⁴ The meeting summaries refer to street observation of carriers, without specifically identifying appellant.

⁵ For example, an agreement which involves the reduction of a disciplinary action does not establish that the employer acted abusively towards the employee; *see Barbara E. Hamm*, 45 ECAB 843 (1994).

issue indicates that there was no factual basis for a finding of error or abuse, and therefore the original acceptance was erroneous.

With regard to the remaining allegations made by appellant, the Board finds that the Office properly found that no compensable employment factor had been established. To establish a claim based on harassment, a claimant must support her allegations with probative and reliable evidence.⁶ Appellant alleged unwanted sexual advances by the supervisor, but these allegations have been denied by the supervisor. The record contains three unsigned witness statements that Mr. Kinder was “interested” in appellant, without providing detail on specific incidents. Appellant indicated that she did not file an EEO (Equal Employment Commission) complaint or other complaint regarding these allegations.⁷ The record contains no finding of sexual harassment, nor other sufficient evidence to establish a claim based on sexual harassment.

Appellant also alleged that she was subject to harassment from Mr. Kinder in the form of such actions as being followed in the office, disparate treatment, and the denial of a transfer. Again, there is no indication that an EEO complaint was filed, and the supervisor has denied the allegations.⁸ The unsigned witness statements noted above refer in general terms to harassment of appellant, without discussing specific incidents. In the absence of probative and reliable evidence of harassment, the Board finds that appellant has not established a compensable factor of employment based on a claim of harassment in this case.

Accordingly, the Board finds that the original factual basis for accepting the claim was in error, and the record contains no probative evidence establishing a compensable factor of employment. The Office therefore properly rescinded acceptance of the claim.⁹

The decision of the Office of Workers’ Compensation Programs dated April 8, 1996 is affirmed.

⁶ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁷ Appellant submitted a statement from a coworker, who indicated that she had filed a sexual discrimination claim against Mr. Kinder, and a second coworker, who stated that she was subject to sexual harassment from Mr. Kinder. These statements do not discuss appellant’s specific allegations. It is also noted that the EEO bench decision found no discrimination.

⁸ With respect to the denial of a transfer request, the record contains a March 20, 1992 decision denying a grievance on the issue.

⁹ Since appellant has not established a compensable factor of employment as contributing to her condition, it is not necessary to address the medical evidence; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

Dated, Washington, D.C.
July 23, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member