U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA S. TERRIBLE and U.S. POSTAL SERVICE,
POST OFFICE, Grove City, Ohio

Docket No. 96-2136; Submitted on the Record;
Issued November 25, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On November 9, 1995 appellant, then a 45-year-old supervisor, filed an occupational disease claim, alleging that she sustained an esophageal spasm caused by stress which she first became aware of and realized was related to factors of her federal employment on November 6, 1995. Appellant indicated that she had confrontations with several employees and become short of breath while on the way home. She stopped at a fire station and was taken to the emergency room where she was diagnosed with an esophageal spasm related to stress. Appellant stopped work on November 9, 1995 after getting out of the hospital. Appellant identified the following incidents and events as causative factors of her claimed condition in a supplemental statement and in a memorandum to the postmaster, Frank D. Bell: a main source of stress was interaction with John Collins, an employee she formerly supervised, with whom she alleged there was a history of conflict, threats, use of profanity, and an assault with a 50-pound bag of salt she asked him to move which he threw at her; appellant also alleged that Mr. Collins had libelous statements printed in the employing establishment union newsletter and her appeals to management and to the National Association of Postal Supervisors were not acted upon; appellant indicated that Mr. Collins received therapy during which he discussed his hatred of appellant frequently and later informed her that this was a topic of discussion; appellant indicated that after a detail to a rural post office as officer in charge from March 1994 to September 1995, she realized she was under undue stress in her normal position with the constant conflicts with Mr. Collins and her employees; Mr. Collins had filed a grievance in which he alleged that appellant allowed her employees to not take lunch and he wanted the same privilege; as a result of that grievance on November 6 and 7, 1995, appellant advised her employees that they had to take lunch and it caused several confrontations with her employees. In the memorandum to Mr. Bell appellant reported that Mr. Collins threatened appellant with an Equal Employment Opportunity action based on her discussion of this subject with her

employees; Mr. Fahner became belligerent and refused to go to lunch and all of the clerks who worked for her became upset; when Mr. Fahner returned from lunch he appeared drunk and had to be sent home which caused another scene; appellant had to fire "Paye Peneot"; Mr. Fahner called to say he was not drunk and would not be in work the next day; Dayna and Sue confirmed that they believed he had been acting drunk to leave work; Frank and Sue went home sick; Dayna left to do street observations; when appellant requested that "Kurtz" look for a check a customer believed she dropped, he became belligerent and said that management was not doing anything to find the check so why should he; Ms. Stancy asked for the next day off claiming it was her birthday, but when appellant checked it was not. Ms. Stancy became upset and said the records had a clerical error. Appellant received emergency care for a suspected heart attack on her way home from work but was diagnosed with an esophageal spasm due to stress and was hospitalized a day and a half.

Appellant reported that she advised Mr. Bell of the events of Monday, November 6 and Tuesday, November 7, 1995 when she returned to work on Thursday, November 9, 1995, and he sent her home again. Appellant returned to work on November 20, 1995. Appellant indicated that the stress continued when she returned to work and was visited by Lovell McKee, an employing establishment operations manager, who tried to get appellant to drop her claim. He told appellant that the claim would hurt her career, that she could not receive placement as a postmaster because she had done a poor job as officer in charge on the detail according to Rodney Mates, the employing establishment operations manager where she was detailed and that a position in marketing would not be available to her despite her degree in business. Appellant indicated Mr. McKee was overbearing and that everything she suggested or reported was denied or dismissed. When Mr. Bell joined in the meeting, Mr. McKee became very polite and indicated that appellant was going to contact the very people he had assured her he did not want her working with them. In discussions with Mr. Mates at a later time, he indicated that appellant had done well with the officer in charge assignment, and he had advised Mr. Rogers, the district manager of this. Appellant also noted difficulty in pursuing her claim due to forms not being available and then not being received. Appellant indicated that during the week of November 20, 1995, Mr. Bell stated that he would protect appellant from Mr. Collins. Appellant was placed at another duty station shortly thereafter, but on December 19, 1995, Mr. Collins showed up and appellant stayed in another room until he left.

In a decision dated April 10, 1996, the Office denied appellant's claim on the grounds that fact of injury was not established, finding that appellant had not substantiated any compensable factors under the Federal Employees' Compensation Act and had used a play on words.

The Board has carefully reviewed the entire case record on appeal and finds that this case is not in posture for decision.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.[1] To establish her emotional condition

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

claim, appellant must submit: (1) factual evidence identifying factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified factors are causally related to her emotional condition.[2]

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Act. Where disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from factors such as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[3] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[4] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[5]

In the present case, appellant alleged that there were conflicts that took place related to her administration of supervisory duties, that there was harassment from Mr. Collins, a former employee, and that a management official attempted to coerce her into dropping her occupational disease claim. The Office undertook further development of the claim by requesting additional factual information from the employing establishment on December 13, 1995, including a statement from a supervisor knowledgeable about the statement provided by appellant, a copy of appellant's position description, comments on detrimental factors that existed during the period specified by appellant and information on whether appellant was generally able to perform her duties as expected. The Office received a statement on March 11, 1996 from Mr. Bell in which he reported the following: he referred to the Dearborn Michigan incident mentioned by appellant in her statement and indicated that appellant had never advised him that she was threatened in relation to that event; he corroborated that an article was published in the union newsletter in which first names only were used, but reported that management could not do anything since it had not control over union media; he confirmed that appellant was concerned

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

[3] *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

[5] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

about her safety with Mr. Collins but said appellant used a "play on words" because he had also advised her he did not believe Mr. Collins would hurt her; he indicated that appellant had been away for a year and a half of his time in this position on a detail, but that he had removed Mr. Collins from her supervision in June 1993 so she would not have to deal with him; he also stated, "After [appellant] returned to the Grove City office to her regular duties, she spent approximately [five] weeks at the Grove City office before she was detailed to safety;" he then accused appellant again of making a "play on words" concerning his assurance that he would protect her, indicating it was in response to appellant's belief that Mr. Collins would get a gun and hurt them.

Appellant has alleged several incidents she which asserts constituted harassment. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.[6] Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.[7] Appellant has provided such probative and reliable evidence in the instant case with respect to her former employee, Mr. Collins. Appellant's supervisor corroborated that appellant believed that Mr. Collins would hurt her due to his past conduct and indicated that appellant was "detailed to safety." While Mr. Bell reported that he did not believe Mr. Collins would hurt appellant, his reason for detailing appellant to another office substantiates that she was being threatened in the workplace and that the detail was necessary to protect her. Thus, appellant has established that she was being harassed by a coworker.

Appellant's contention that libelous statements were made about her in the union newsletter, although corroborated in part by Mr. Bell, is not compensable under the Act. Appellant has indicated that this was not a publication within the purview of the employing establishment, but rather, was a union newsletter. As such, statements contained therein cannot be used to demonstrate error or abuse by the employing establishment. Moreover, appellant has not detailed with any sufficiency the nature of the libelous statements or offered any proof that the content of the newspaper was false. Therefore, the alleged statements imputed to Mr. Collins that were in the newsletter are not compensable under the Act. In addition, appellant has not established that Mr. McKee attempted to force appellant to drop her claim. While Mr. McKee has corroborated that a meeting did take place with appellant. On November 21, 1995 he indicated that the purpose of the meeting was to discuss placement of appellant in another position, as she desired. While he also addressed perceived deficiencies in appellant's supervisory skills, his discussion of this topic falls within a personnel matter and appellant has not established that there was any error or abuse by Mr. McKee in addressing her skills.

Appellant has also established that conflicts arose as part of her regular duties as a supervisor pertaining to meetings on November 6 and 7, 1995. The case will therefore be

[6] *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[7] *Ruthie M. Evans*, 41 ECAB 416 (1990).

remanded to the Office for further development by preparation of a statement of accepted facts and referral of appellant to an appropriate physician for an opinion on whether the compensable factors caused or contributed to any diagnosed emotional condition. Thereafter, a *de novo* decision should be issued.

The decision of the Office of Workers' Compensation Programs dated April 10, 1996 is hereby set aside and the case is remanded for further proceedings in accordance with this decision.

Dated, Washington, D.C.
November 25, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member