

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIANNE D. DUGAS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Boston, Mass.

*Docket No. 97-467; Submitted on the Record;
Issued November 20, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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

On November 30, 1994 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained major depression due to factors of her federal employment.

By decision dated July 18, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish that she sustained an injury in the performance of duty. By decision dated July 19, 1996 and finalized July 22, 1996, an Office hearing representative affirmed the Office's July 18, 1995 decision. The hearing representative found that appellant had established a compensable factor of employment but that the medical evidence was insufficient to establish that she had an emotional condition attributable to the identified employment factor.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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 or her 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

¹ 5 U.S.C. §§ 8101-8193.

factors as an employee's fear of a reduction in force or his or her 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

Appellant attributed her emotional condition, in part, to harassment and discrimination by her supervisor, Ms. Sharon Ravitz. Specifically, appellant contended that on the morning of October 19, 1994, Ms. Ravitz reviewed the amount of work that she had produced and counseled her about getting up from her workstation and talking to a coworker. Appellant maintained that this constituted harassment and discrimination because she was unwell on that date and had visited the employing establishment's infirmary. Actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act. However, for discrimination to give rise to a compensable disability, there must be some independent evidence that harassment or discrimination did, in fact, occur.⁵ Mere perceptions alone of harassment or discrimination are not compensable.⁶ Further, the assessment of an employee's performance is an administrative matter and, unless error or abuse in the administration of a personnel matter is shown, coverage will not be afforded.⁷ In the instant case, Mr. Thomas J. Curtis, a general supervisor with the employing establishment, indicated that on October 19, 1994 he observed appellant talking with a coworker rather than keying at her terminal. Mr. Curtis stated that he told Ms. Ravitz to review appellant's morning performance, and further stated that, if appellant was unwell, she should have informed her supervisor. Appellant has not established by the weight of the reliable, probative and substantial evidence that Ms. Ravitz' review of the work on October 19, 1994 constituted either harassment or error or abuse in the performance of an administrative function. Thus, she has not established a compensable factor of employment.

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 *William P. George*, 43 ECAB 1159 (1992).

⁶ *Id.*

⁷ *James E. Woods*, 45 ECAB 556 (1994).

Appellant further attributed her emotional condition to receiving counseling on December 30, 1994 regarding her use of sick leave and receiving a letter in May 1995 placing her on restricted sick leave. She further related that in January 1994 the employing establishment forced her to take a week off instead of granting her two days leave as requested. The record contains a grievance agreement in which appellant received restored leave for the period January 15 to 21, 1994, and a letter from the employing establishment removing her from restricted sick leave in September 1995 after she supplied sufficient documentation. The Board has held that matters involving the use of leave are administrative in nature and are not related to an employee's regular or specially assigned duties, and thus are not compensable factors of employment absent a showing of error or abuse.⁸ Neither the fact that the employing establishment modified its initial finding for the January 1994 period nor the fact that she was ultimately removed from the restricted sick leave list in September 1995 establishes that the establishment acted unreasonably in processing her leave requests.⁹ Therefore, appellant's reaction to leave matters does not constitute an employment factor as there is no evidence of error or abuse by the employing establishment.¹⁰

Appellant additionally contended that she experienced verbal abuse by Ms. Ravitz in a January 5, 1995 meeting. Appellant stated that Ms. Ravitz yelled at her during the meeting and called her a "liar." Verbal altercations with supervisors, when sufficiently detailed by the claimant and supported by the evidence of record, can constitute factors of employment.¹¹ In the present case, Ms. Beverly Anderson, a union steward, related in a February 17, 1995 statement that "in my presence, sup[ervisor] De Luca [Ms. Ravitz] badgered [appellant] about why she had to meet with me, and then later accused her of being a liar." As the evidence of record supports appellant's allegation of verbal abuse, the Office properly found that she had established a compensable factor of employment.

Appellant's burden of proof, however, is not discharged by her identification of a compensable employment factor. To establish her claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor.¹²

In a report dated November 17, 1995, Dr. Rolland L. Sturtevant, a psychiatrist, related that he was treating appellant for depression and stress related to her employment. He stated, "Her immediate supervisor seems to be insensitive to her needs and has made her job stress much higher." In a report dated January 26, 1995, Dr. Sturtevant noted that appellant's supervisor approached her on a day that she felt unwell in a manner that increased her stress. He further related that Ms. Ravitz management style caused appellant's condition but does not

⁸ *Gracie A. Richardson*, 42 ECAB 850 (1991).

⁹ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Joe E. Hendricks*, 43 ECAB 850 (1992).

¹⁰ *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹¹ *Samuel F. Mangin, Jr.*, 42 ECAB 671 (1991).

¹² *William P. George*, 43 ECAB 1159 (1992).

provide further details. As Dr. Sturtevant does not relate appellant's emotional condition to verbal abuse by Ms. Ravitz in the January 1995 meeting, his reports are of little probative value.

Appellant has not submitted medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, has concluded that the disabling condition is causally related to the identified employment factor and supported that conclusion with sound medical reasoning. Thus, appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

The decision of the Office of Workers' Compensation Programs dated July 19, 1996 and finalized July 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 20, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member