

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDY L. MOORE and U.S. POSTAL SERVICE,
POST OFFICE, Maidsville, W.Va.

*Docket No. 96-2046; Submitted on the Record;
Issued September 14, 1998*

DECISION and ORDER

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

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

On September 18, 1995 appellant, then a 42-year-old rural carrier, filed an occupational disease claim alleging that she sustained an emotional condition which she attributed to harassment from her supervisor, Francisco Guzman. She alleged that Mr. Guzman instructed her not to chat with customers, told her not to arrive at work prior to her scheduled starting time, told her not to deviate from her postal route, did not allow time for her to purchase stamps to give her change for stamp credit, made her count her cash credit, and asked her to provide a doctor's certificate for light-duty work. Appellant also stated that he replaced the paper towels in the restroom with a cloth towel instead of obtaining more paper towels. She complained that Mr. Guzman's desk was not located on the work floor and that he denied appellant's request for leave on one occasion and on another occasion he directed her to sign a leave slip indicating that she had been absent without official leave (AWOL). Appellant alleged that he telephoned her at home on three occasions to inquire about basic office procedures. She alleged that on August 18, 1995, Mr. Guzman accompanied her on her route in order to perform a route inspection and asked her personal questions, put his hand on her knee, and stated several times that "me and you" have to work this out. Appellant also stated that he gave her instructions regarding the manner in which she performed her delivery such as directing her to use the emergency brake at each box. She alleged that Mr. Guzman often talked to her about various unimportant matters as she was signing out for the day, saying that they would have to work the matters out and she alleged that he stood too close to her on many occasions. Appellant alleged that he sometimes shouted at her.

In a report dated October 4, 1995, Dr. Charlene F. Horan, a Board-certified internist, related that appellant first sought treatment on August 31, 1995 for an acute anxiety reaction. She related that appellant reported a sexual advance by her supervisor. Dr. Horan related that following this incident she was alone in the employing establishment with her supervisor who kept telling her "she knew what she needed to do." She diagnosed post-traumatic stress disorder

and stated that appellant was unable to return to work because of fear of this particular supervisor.

In a letter dated November 16, 1995, Charles Woyan, an employing establishment injury compensation specialist, noted that appellant had filed an Equal Employment Opportunity Commission (EEOC) complaint concerning the alleged unwanted sexual advance and that the complaint had been investigated and it was determined that there was insufficient evidence to support appellant's claim of sexual harassment.

In a report dated February 14, 1996, Dr. Carol A. Paris, a psychiatrist, related that appellant was complaining of anxiety and depression stemming from an incident on August 18, 1995. Dr. Paris related appellant's allegation that on August 18, 1995 her supervisor, during a route inspection, began asking her personal questions and put his hand on her knee and said "... I know you understand me and you have to work this out." She related that appellant brushed his hand away but that her supervisor continued to pursue her and to suggest that "me and you can work this out." Dr. Paris related appellant's allegations that her supervisor created a hostile working environment. She diagnosed post-traumatic stress disorder and major depression, single episode, moderate to severe, and stated her opinion that appellant's disability was a direct result of the workplace stress created by her supervisor who sexually harassed her and his supervisors who persisted in allowing him to create a continuing hostile and abusive work environment.

In a letter dated January 8, 1996, Mr. Guzman denied appellant's allegations. He stated that on August 18, 1995 he was performing a route inspection on appellant's route and he advised appellant of some ways to improve her delivery but denied that he had asked her any personal questions or that he had put his hand on her knee. Mr. Guzman stated that they had a discussion regarding her route and a change that appellant had requested and he indicated that this was a local problem that could be resolved "between you and me" He stated that appellant later used those words "between you and me" to deliberately distort their context to create the perception of sexual innuendo. Mr. Guzman stated that on August 25, 1995 he advised appellant of a reduction of 12 hours on her route and that she became upset because she felt this would reduce her pay. He stated that on August 29, 1995 he advised appellant that her excess cash needed to be turned in to the employing establishment and that he counted the cash in front of her but she refused to sign the receipt stating that she had "just been watching" and needed to do her own counting and agreed to do this the following day. Mr. Guzman stated that on August 31, 1995 appellant arrived at work and appeared to be upset and again refused to sign the cash receipt even though her union steward felt that everything appeared correct. He stated that appellant took her cash/stamp credit and locked it in her box inside a drawer and then asked for sick leave taking the key home with her. Mr. Guzman stated that these funds were not returned to the employing establishment until December 14, 1995.

By decision dated May 7, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she had sustained an emotional condition in the performance of duty causally related to compensable factors of her employment.¹

¹ The Board notes that this case record contains a document pertaining to a claimant other than appellant. Upon return of this case record, the Office should place this document in the correct file. Also, this case record contains

The Board finds that 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 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. Where the disability results from an employee's emotional reaction to 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.² On the other hand, the disability is not covered where it results from such factors 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.³

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 employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

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.⁶ 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.⁷

new evidence which was not before the Office at the time it issued its May 7, 1996 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² 5 U.S.C. §§ 8101-8193.

³ *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

Regarding appellant's allegations that Mr. Guzman instructed her not to chat with customers, told her not to arrive at work before her scheduled starting time, told her not to deviate from her postal route, did not allow time for her to purchase stamps to give her change for stamp credit, made her count her cash credit, asked her to provide a doctor's certificate for light-duty work, replaced the paper towels in the restroom with a cloth towel, did not locate his desk on the work floor, he denied appellant's request for leave on one occasion, directed her to sign an AWOL leave slip on another occasion, and gave her instructions regarding the manner in which she performed her delivery such as directing her to use the emergency brake at each box, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although the handling of such matters is generally related to the employment, these are administrative functions of the employer, and not duties of the employee.⁹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ In this case, there is insufficient evidence that the employing establishment acted erroneously or unreasonably in the handling of these administrative matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that Mr. Guzman telephoned her at her home on three occasions to inquire about basic office procedures, there is insufficient evidence of error or abuse such that these incidents could be deemed a compensable factor of employment.

Appellant has also alleged that harassment and discrimination on the part of Mr. Guzman contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹² In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisor.¹³ Appellant alleged that on August 18, 1995, Mr. Guzman accompanied her on her route in order to perform a route

⁸ See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

inspection and asked her personal questions, put his hand on her knee, and stated several times that “me and you” have work this out. However, Mr. Guzman denied that he touched appellant or asked her personal questions and he stated that the comment about working things out with appellant referred to a discussion about appellant’s route. In a letter dated November 16, 1995, Mr. Woyan, an employing establishment injury compensation specialist, noted that appellant had filed an EEOC complaint concerning the alleged unwanted sexual advance and that the complaint had been investigated and it was determined that there was insufficient evidence to support appellant’s claim. The Board also finds that there is insufficient evidence of record to establish that appellant was sexually harassed by Mr. Guzman and therefore the incident during the route inspection is not deemed a compensable factor of employment. Appellant also alleged that Mr. Guzman sexually harassed her by standing too close to her on many occasions. However, there is insufficient evidence to establish that these incidents occurred. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant’s allegation that her supervisor shouted at her on many occasions, the Board has recognized the compensability of physical threats and verbal aggression in certain circumstances.¹⁴ However, there is insufficient evidence to establish this allegation as factual and therefore it cannot be deemed a compensable employment factor.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁵

The May 7, 1996 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
September 14, 1998

George E. Rivers
Member

David S. Gerson
Member

¹⁴ See *Alton L. White*, 42 ECAB 666 (1991).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, *supra* note 6.

A. Peter Kanjorski
Alternate Member