

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE E. BIRD and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Boston, Mass.

*Docket No. 97-1973; Submitted on the Record;
Issued April 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On August 5, 1996 appellant, then a 40-year-old maintenance worker, filed a notice of traumatic injury and claim for compensation alleging that, on July 10, 1996, she suffered from stress as a result of sexual harassment and stalking. Appellant indicated that her injury occurred in the "basement, [stockroom], telephone, home telephone and Broadway Bridge." On the reverse side of the CA-1 form, the employing establishment alleged that appellant was not injured in the performance of duty and that her injury was not caused by a third party. Appellant did not miss any work, but she was granted a schedule change.

In a treatment note, which was date stamped as received by the Office of Workers' Compensation Programs on August 21, 1996, Dr. Brian Morris advised that appellant was seen on August 1, 1996 and could return to work on August 18, 1996. He did not provide a diagnosis nor a history of injury.

In an accident report dated August 21, 1996, an employing establishment official identified the date and time of appellant's injury as July 10, 1996. "Sexual harassment/stalking stress" was noted under accident description. The employing establishment official further noted that appellant had her work schedule changed and that she was under the medical attention of Dr. Morris.

In a letter dated August 27, 1996, the Office requested that appellant submit factual and medical evidence to support her claim. The Office asked that appellant describe the specific events and incidents in her employment that related to her claimed condition. The Office requested that appellant respond within 30 days.

In a decision dated September 27, 1996, the Office denied appellant's claim for compensation on the grounds that she failed to establish fact of injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.¹

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

In the instant case, the Board finds that appellant has alleged that she was harassed by a coworker both during and after work hours. Although actions of a coemployee which the claimant characterizes as harassment may constitute a compensable factor of employment, in order for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact occur.⁶ Mere perceptions or feelings of

¹ The Board has no jurisdiction to consider evidence submitted by appellant to the Office or Board subsequent to the Office's September 27, 1996 decision. The Board's review of the case is limited to that evidence before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c).

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

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁶ *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

harassment do not constitute a compensable factor of employment.⁷ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.⁸ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁹

Because appellant has not supported her allegations of harassment with sufficient probative evidence to substantiate that she was harassed by a coworker, the Board finds that appellant has failed to meet her burden of proof. The Board concludes, therefore, that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated September 27, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 13, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁷ See *Lorraine E. Schroeder*, 44 ECAB 323 (1993); *Sylvester Blaze*, 42 ECAB 654 (1991).

⁸ *William P. George*, 43 ECAB 1159 (1992).

⁹ See *Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).