

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRIE L. McCANTS and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 97-545; Submitted on the Record;
Issued July 27, 1999*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant filed a claim on July 26, 1994 alleging that she developed an emotional condition due to factors of her federal employment. The Office of Workers' Compensation Programs denied appellant's claim by decision dated September 12, 1995 finding that she had not submitted sufficient evidence to establish a factor of employment and noting that she had previous claims accepted for bilateral carpal tunnel syndrome, bilateral trapezius muscle strain, tenosynovitis right wrist and consequential depressive adjustment reaction due to the accepted conditions. Appellant requested an oral hearing and by decision dated October 11, 1996, the hearing representative affirmed the Office's September 12, 1995 decision.

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 illness has some connection with the employment but nevertheless does not come within the concept 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 is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.¹

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

Appellant alleged that her current emotional condition was due to her accepted employment injuries including the pain of her conditions as well as physical limitations resulting from the conditions. Appellant's accepted employment conditions constitute compensable factors of employment.

Appellant attributed her emotional condition to several administrative and personnel actions by the employing establishment. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²

Appellant asserted that the employing establishment had attempted to prevent the receipt of continuation of compensation benefits and delayed the processing of her claims. Appellant submitted several requests from the Office to the employing establishment for information necessary to determine appellant's compensation benefits including pay rate and leave usage information. These documents indicate that the employing establishment either delayed in submitting information or failed to submit all of the information necessary for payment of appellant's claim for three different claims in excess of two months per claim. In one instance after three letters from the Office and four months, the employing establishment had not provided the necessary information.

Although these documents indicate that the employing establishment delayed in providing the Office with information, the Board has held that the processing of claims is unrelated to the employee's duties and does not constitute a factor of employment.³

Appellant alleged that her work hours were reduced due to her accepted employment injuries and that this resulted in a loss of income. A grievance decision dated January 24, 1991 indicated that appellant would be compensated for the average hours of other similar employees for the days that she was not allowed to work over four hours. This settlement indicated that it was without prejudice to either parties position and not to be cited by either party. Appellant submitted a decision from the Equal Employment Opportunities Commission (EEO) dated January 28, 1992 finding that the employing establishment had failed to comply with the terms of a settlement agreement in a timely manner and had breached the terms of the agreement.

The Board finds that appellant has established that the employing establishment committed error by failing to comply with the settlement agreement regarding appellant's entitlement to back pay and that she has therefore established a factor of employment.

Appellant attributed her emotional condition to several disciplinary actions taken by the employing establishment some of which were later reduced. Appellant also submitted several

² *Martha L. Watson*, 46 ECAB 407 (1995).

³ *See George A. Ross*, 43 ECAB 346 (1991).

grievances and EEO complaints which were settled without admission of wrongdoing. The Board finds that appellant has not submitted sufficient evidence to establish error or abuse on the part of the employing establishment in regard to these matters. The Board has held that the mere fact that an employing establishment lessens a disciplinary action taken towards an employee does not establish that the employing establishment acted in an erroneous or abusive manner.⁴

Appellant alleged that she was required to work outside her limitations; that the employing establishment ignored the recommendations of her physicians that she not work in drafty locations. Her supervisor responded and stated that appellant was not required to work beyond her restrictions. Appellant has not submitted sufficient evidence to establish that she was required to work beyond her restrictions and has not established error or abuse on the part of the employing establishment.

Appellant attributed her condition to an incident on July 22, 1994 during which she was waiting to sign out on her “wash up” time and a supervisor, Norman Calhoun, asked why she was not working. She took both her badge card and that of another employee, a violation of employing establishment policy. Appellant alleged that Mr. Calhoun yelled at her. She submitted a witness statement indicating that Mr. Calhoun was screaming at appellant and stating that he would terminate both of them. The remainder of the witness statements did not address what occurred after Mr. Calhoun escorted appellant and her coworker into his office. There is no statement from Mr. Calhoun addressing appellant’s allegations. It is well established that verbal abuse by a supervisor may constitute a compensable factor of employment.⁵ In this case, both appellant and a witness asserted that Mr. Calhoun addressed them in an abusive manner while discussing a breach in employing establishment rules. Therefore, the Board finds that appellant has established a compensable factor of employment.

Appellant attributed her emotional condition to other harassment by the employing establishment, including ridicule by coworkers, denial of equal employment opportunities, infliction with financial deprivation, dissemination of erroneous information, disciplinary actions, and verbal abuse. 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. 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.⁶ Appellant has not submitted sufficient factual information to establish harassment through the actions of the employing establishment.

As appellant has established compensable factors of employment, her accepted employment injuries, that the employing establishment improperly delayed in providing her with agreed upon back pay and that she was subject to verbal abuse by a supervisor, the Board must

⁴ *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

⁵ *David W. Shirey*, 42 ECAB 783 (1991).

⁶ *Alice M. Washington*, 46 ECAB 382 (1994).

analyze the medical evidence to determine if appellant has established that she developed an emotional condition due to the accepted employment incidents.

Dr. David E. Richter, an internist, completed a report on May 17, 1994 and noted appellant's accepted employment injuries. He noted appellant's treatment for depression and adjustment reaction. Dr. Richter stated that the consequences of her injury may well have contributed to these emotional conditions. This report does not offer a definitive opinion that appellant's emotional condition is due to her accepted employment injuries, as Dr. Richter indicated that these conditions were not generally related to work injuries and were multi-factorial. Therefore this report is speculative on the issue of causal relation and is not sufficient to meet appellant's burden of proof.

In a report dated November 23, 1994, Dr. Kurt C. Stange, a Board-certified family practitioner, diagnosed fibrositis. He stated that appellant's pain, disability and depression were being maintained and worsened by continued repetitive motion, work, exposure to drafts and "the stress of an apparent punitive approach to her resultant disability." The factors to which Dr. Stange attributed appellant's condition have not been accepted as factual. Therefore his report is not sufficient to meet appellant's burden of proof.

In support of her claim, appellant submitted a report dated December 16, 1994 from Dr. Ellen A. Rosenblatt, a psychiatrist of professorial rank. She diagnosed major depression, single episode, chronic with melancholic features and generalized anxiety disorder. Dr. Rosenblatt attributed this condition to appellant's accepted condition of carpal tunnel syndrome as well as to chronic harassment at work including verbal harassment, increased scrutiny at work, many disciplinary actions which appellant felt were unwarranted and unwillingness to abide by appellant's physical limitations.

Dr. Rosenblatt provided a diagnosis of appellant's condition and attributed this condition to accepted factors of employment including appellant's accepted employment injury. However, she did not provide an adequate factual history which included appellant's previously accepted emotional condition. Dr. Rosenblatt also failed to demonstrate knowledge of the specific employment factors accepted, *i.e.*, the July 22, 1994 incident with Mr. Calhoun, as well as the delay in back pay. She did not provide medical rationale explaining how or why appellant's current condition is causally related to these factors, rather than the unsubstantiated allegations of work beyond restrictions and error in disciplinary actions.

On May 6, 1996 Dr. Rosenblatt opined that appellant's current condition of major depression and generalized anxiety disorder was a direct result of her job-related physical infirmity followed by extensive and persistent harassment in her work environment. She noted that appellant was required to work outside her restrictions and was subject to unjust disciplinary actions. This report again does not distinguish between appellant's accepted and nonemployment-related physical conditions and also attributes her emotional condition to alleged employment factors which have not been accepted by the Board.

In a report dated August 16, 1996, Dr. Rosenblatt noted the July 22, 1994 incident with Mr. Calhoun and diagnosed major depression, single episode, chronic, with melancholic features. He stated:

“It is with reasonable medical certainty that this diagnosis is directly related to and a result of the hostile work environment created by her employer following her injury and request for reassignment. Over the past years, [appellant’s] workplace has been a controlled negative environment, systematically reinforcing a demeaning self-image and leaving [appellant] feeling trapped and defeated. The tactics used by her employer are designed to make [appellant] feel isolated. The chronic nature of this negative environment has stripped [appellant] of her previous sense of solid identity and self-esteem. This depression is a common outcome reported in instances of a systematic hostile work environment.”

Dr. Rosenblatt’s report indicates that she attributes appellant’s emotional condition to a “systematic hostile work environment.” The Board has not accepted that appellant was subjected to such an environment and in order to establish her claim, appellant must submit medical evidence including a clear description of the accepted employment factors and providing an opinion on the causal relationship between these factors and appellant’s condition.

Appellant also submitted a report dated August 25, 1994 from Dr. David A. Moskovitz, a Board-certified psychiatrist. He noted appellant’s accepted condition of carpal tunnel syndrome as well as the July 22, 1994 incident with Mr. Calhoun and diagnosed situational depression. Dr. Moskovitz opined that this condition was “in part a result of chronic stress of her work environment and in part a result of her chronic pain.” Although this report supports appellant’s claim for an emotional condition, Dr. Moskovitz did not provide a history of injury including her previously accepted emotional condition and did not provide a clear opinion that he was attributing appellant’s current condition to the incident with Mr. Calhoun as well as to her carpal tunnel syndrome rather than the nonemployment-related condition of fibrositis. Therefore his report is not sufficient to meet appellant’s burden of proof.

As appellant has not submitted the necessary rationalized medical opinion evidence attributing her emotional condition to the accepted factors of employment, she has failed to meet her burden of proof and the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated October 11, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 27, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member