

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANA L. UNUM and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

*Docket No. 97-1710; Submitted on the Record;
Issued July 27, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

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

In the present case, appellant, a part-time flexible clerk/relief postmaster, claimed that on October 17, 1994 she first realized she had sustained a major depressive disorder caused or aggravated by her federal employment. The Office of Workers' Compensation Programs denied appellant's claim on August 28, 1995, on the grounds that appellant had not established that she sustained an injury in the performance of duty. The Office denied modification of the August 28, 1995 decision, after merit review, on January 17, 1997.

In support of her claim, appellant submitted a supplemental narrative statement in which she summarized daily work activities and incidents from May 8, 1993 to January 18, 1995. Appellant's summary primarily dealt with her interactions with a coworker, Debbie, and her supervisor, Ms. Etherton. She also described interactions between Debbie and Ms. Etherton. Appellant stated that Ms. Etherton would at times become upset with her even though she was doing what she believed she was instructed to do by Ms. Etherton. Appellant stated that when she questioned Ms. Etherton concerning one such incident, she was told she could have been fired for insubordination, to which appellant replied that Ms. Etherton should give clear instructions and identify direct orders. She explained that on August 23, 1993, she was made relief postmaster, retroactive to the date she began work. Appellant stated that on March 12, 1994 she requested additional training because she had concerns that her religious, caring/loving approach towards others conflicted with the employing establishment methods. She stated that on May 26, 1994 she discussed issues of hostility with Debbie, Debbie denied feelings of hostility, but that evening Debbie locked her out of the employing establishment when she left for the evening. On May 28, 1994 Debbie walked off the job. Appellant told Ms. Etherton that she had "long standing problems with guilt and self blame in abusive and/or crisis situations." Ms. Etherton told appellant that trying to deal with Debbie, work issues, work relationship and work problems in a caring way was wrong and inappropriate.

On May 30, 1994 appellant stated that she again informed Ms. Etherton of problems with guilt, self blame and depression in abusive situations. On May 31, 1994 appellant stated she was issued a letter of warning for "failure to follow instructions" for speaking without supervisory authorization. She was told that it was her fault that Debbie had walked off the job. Appellant stated that on July 11, 1994 she was told that she still could not be trusted and would work as a clerk, while receiving relief postmaster pay. Appellant stated that on October 8, 1994 she requested safety forms and voiced concerns regarding a parking lot light which was out, but was told to write a note to request the forms. She also stated that she attempted to tape record a conversation with Ms. Etherton on that day. Appellant was subsequently told not to bring a tape recorder to work and not to belittle Ms. Etherton or other employees. She stated that on November 2, 1994 Ms. Etherton discussed her safety concerns and dismissed most of them. Ms. Etherton informed appellant that she was to report to work at 5:00 a.m. on Tuesday, November 8, 1994 or be written up for insubordination.

Appellant stated that on December 12, 1994 she pointed out to Ms. Etherton that the CFS and nixie mail had other employees mail mixed in. Ms. Etherton asked another employee to look into the situation and asked appellant if she wanted to discuss the CFS. Appellant stated that she responded that there was nothing to discuss, to which Ms. Etherton asked "what [is] your point," at which time appellant asked Ms. Etherton to stop demeaning her. Appellant stated that she called in sick on December 13 to 15, 1994 and was not told that on December 16, 1994 she would be alone with a stranger in the building. She also stated that on December 16, 1994 Ms. Etherton told her she would need a new medical excuse. Appellant stated that on December 21, 1994 she took a message for Ms. Etherton, in which Terry Cooper wished her his support in her recovery and stated that he was proud of her achievements in becoming a postmaster and was sorry to hear of her brother's and father's illnesses. She stated that when she related this message to Ms. Etherton, Ms. Etherton asked what she meant by "recovery" and appellant answered Ms. Etherton that she believed that it referred to Ms. Etherton's abusive and dysfunctional past, but that she was only relaying a message. Appellant stated that on December 23, 1994 Ms. Etherton told her she was not to discuss her personal life, other employees or customers personal lives, and that this was a "formal discussion" of the matter. On January 2, 1995 appellant noted that she was locked out of the safe. On January 5, 1995 at till count, it appeared appellant's till had been tampered with. She was told to go home. On January 11, 1995 appellant was told by Ms. Etherton that she did not feel safe being alone with appellant and that Mitch would be present at all times. Also on that day, appellant was given a notice of restricted sick leave and was told that she would be available on 24-hour notice schedule, and on shorter notice in emergencies. Appellant was also told she had failed to follow instructions by not bringing in medical documentation.

On January 23, 1995 appellant's supervisor, Ms. Etherton, Postmaster, responded that appellant's statement was full of inaccuracies and distortion. The postmaster noted that appellant alleged that she harassed her. She explained that appellant defined as harassment any attempt to set boundaries or to hold herself accountable for her actions. The postmaster also stated that her attempt to control inappropriate behavior only escalated appellant's retaliation. In reality, appellant had harassed an employee until the other employee quit. The postmaster stated that while appellant alleged that she physically menaced her and screamed at her, she had made it a point not to come within three feet of appellant. She also stated that she had never screamed

at appellant, although the intensity of her voice increased with frustration at times. Further, the postmaster stated that while appellant had alleged that she had a history of violent and abusive behavior, she had no such history, either in her postal career or her personal life. However, that appellant had shared such a history and had alluded to restraining orders both to protect herself, and to protect others from her. Finally, the postmaster stated that she absolutely denied appellant's charges of tampering with her till and cooking the books.

Appellant also submitted an Equal Employment Opportunity (EEO) complaint affidavit wherein she essentially reiterated her prior allegations, but added further details to some allegations. She described being locked out of a filing cabinet which contained forms, equipment and other documentation necessary to perform relief postmaster duties from October 8, 1994 to January 13, 1995, although she was still paid the wages of a relief postmaster. Appellant stated that her work schedule was not posted on October 8, 1994 and she was told to look at the postmaster's personal calendar. Appellant also stated that in October 1994, her work schedule was changed such that it conflicted with her appointments with the employee assistance program, but she was told by her supervisor to cancel/reschedule her employee assistance program appointments. Appellant indicated that on some days she was scheduled to report to work at 5:00 a.m., which was an unnecessarily early and unsafe hour. She outlined dates on which she claimed her supervisor canceled appellant's scheduled work hours, because the work had already been completed.

The Board finds that appellant has not met her burden of proof in this case.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act. Nor is disability covered when it results from such factors as desire for a different job, promotion or transfer.¹

An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to the Act.² Thus, if an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable. In the present case, the only allegations appellant made which pertained to the performance of her own duties were that she could not interact with Debbie, a coworker, in a Christian, caring way, and that she was locked out of a desk and the safe and therefore

¹ *Helen P. Allen*, 47 ECAB 141 (1995).

² See *Sandra F. Powell*, 45 ECAB 877 (1994).

could not perform relief postmaster duties during periods of time in 1994 and 1995. The evidence of record indicates that Debbie, a coworker, walked off of the job while appellant was working as relief postmaster. Appellant has not actually alleged that she sustained an emotional reaction because she was required to supervise and interact with Debbie. Rather her allegations in this regard refer to appellant's subsequent discussions with the postmaster, and appellant's displeasure with the postmaster's suggested supervisory style. Appellant therefore has not actually alleged that actual performance of her duties caused her emotional condition, but rather that the postmaster's instructions to her regarding supervisory style caused her condition.

Regarding appellant's allegations that she was locked out of a drawer and safe and could not perform duties of a relief postmaster, appellant's own statements acknowledge that even though she was being paid the wages of a relief postmaster, she was told that she would be performing clerk duties as of July 11, 1994. Appellant did not indicate that she was actually required to perform the duties of relief postmaster after that point in time

Rather than the work itself, appellant has attributed her emotional condition to alleged administrative actions and harassment by her supervisor. Appellant has not, however, established the compensability of these allegations. Although administrative and personnel matters are generally related to the employment, they are functions of the employer and not duties of the employee.³ Thus the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁴ Appellant's allegations regarding instructions as to job performance, reassignment of duties, safety concerns, sick leave issues, and posting of assignments, all concern administrative and personnel actions taken by the employer. She has not, however, submitted any evidence that the administrative actions were made in error or were in fact abusive. The employing establishment has explained that appellant was not receptive to advice and work boundaries established by the postmaster. The postmaster denied that she had in fact acted abusively towards appellant. While, the statements from both appellant and her supervisor indicate that appellant was not receptive to supervisory instruction, but rather indicate that appellant wished to define her own role, there is no evidence that appellant's supervisor acted unreasonably or abusively in dealing with any of the many issues presented by appellant. As appellant's allegations lack substantiation of error or abuse on behalf of the employing establishment, they are not compensable in this case.

Appellant has also alleged that she was harassed by her supervisor, the postmaster. Actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁵ In the present case, the record indicates

³ *Martin Standel*, 47 ECAB 306 (1996).

⁴ *Id.*

⁵ *William E. Seare*, 47 ECAB 663 (1996).

that appellant's relationships with her coworkers deteriorated during 1994. Appellant's own recitation of conversations and interactions does not, however, document harassment. Rather, while appellant objected to instructions or statements made by her supervisor, appellant's own version of events does not demonstrate that her supervisor acted to harass or discriminate against appellant.

Appellant has therefore not established any compensable factors of employment in this case. It is therefore unnecessary to review the medical evidence of record.

The decision of the Office of Workers' Compensation Programs dated January 18, 1997 is hereby affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member