

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of MARILYN A. WILLIAMS and U.S. POSTAL SERVICE,  
POST OFFICE, Miami, Fla.

*Docket No. 97-2593; Submitted on the Record;  
Issued July 15, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

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

On July 22, 1995 appellant, then a 48-year-old window clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she has experienced work-related stress causally related to factors of her federal employment. Appellant noted that she first became aware that her stress was caused or aggravated by her employment on June 12, 1995. In an accompanying statement, appellant attributed her emotional condition to her employer's refusal to allow time off work to care for her terminally ill son. The following allegations as set forth by appellant's attorney, raise issues of potential abuse: (1) violations of the Family and Medical Leave Act: whereby appellant had an October 18, 1994 letter of warning<sup>1</sup> issued in regard to her attendance, for late arrivals to work, and for staying home to care of a sick child; whereby appellant was being charged for absences which the employing establishment had previously granted; and whereby the employing establishment marked appellant's absence an absence without leave (AWOL) in light of the fact it received documentation from appellant's sick son's attending physician stating the events which would cause appellant's absences; (2) discrimination and harassment by station manager, Carlos G. Rodon in an October 14, 1991 incident in which he yelled at appellant to get off the office phone, thereby denying appellant phone rights to check on her sick child and causing her additional stress and the added expense of a cellular telephone; (3) the Collective Bargaining Agreement stated discipline should be corrective in nature, while appellant's October 18, 1994 letter of warning was punitive; and (4) disparate treatment by the employing establishment, which caused a stressful work environment for appellant. Appellant has also asserted that the manner in which Mr. Rodon gave her letters or left her leave requests forms on his desk made her coworkers aware of her job-related stress situation. She additionally asserted that the

---

<sup>1</sup> This letter of suspension for excessive time off was later rescinded by the agency.

employing establishment was insensitive by denying advance requests of leave at the last minute and calling shortly after her son's death requesting that she return to work.

By decision dated April 15, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office found that appellant had not alleged any compensable factors supported by evidence as contributing to her condition. By decision dated May 27, 1997, an Office hearing representative affirmed the April 15, 1996 decision.

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 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 comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the factor. When the matter asserted is a compensable factor of employment and the evidence of

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

<sup>6</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

In the present case, appellant has primarily attributed her emotional condition to abuse and harassment by her supervisors in the administration of an administrative or personnel action of the employing establishment. An employee's emotional reaction to an administrative or personnel matter is not generally covered under the Act. Thus, an emotional reaction to matters pertaining to leave are not generally covered under the Act without error or abuse on the part of the employing establishment.<sup>8</sup> Likewise, an employee's complaint concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.<sup>9</sup>

Appellant's attorney has discussed appellant's October 18, 1994 letter of warning issued for excessive time off as violating the Family and Medical Leave Act. The Board notes that this letter of suspension was rescinded by the agency. The charging of an employee with AWOL status or the issuance of a letter of warning is an administrative or personnel action of the employing establishment.<sup>10</sup> To the extent that appellant's attorney argues that the actions of appellant's supervisor were erroneous, no evidence is submitted to support a finding of error or abuse. The employing establishment indicated that once proper documentation was received, all AWOL charges and corrective action taken were withdrawn and the Family and Medical Leave Act was applied. Thus, appellant has not provided supporting evidence documentation to establish error or abuse regarding this administrative matter.

The denial of leave time, or the demand for supporting documentation of requested leave, are matters of supervisory discretion. Although appellant's employer may have been insensitive to her need to take time off work to care for her terminally ill son, there is no objective evidence in the record that the employing establishment erred or acted abusively in the administration of its personnel policies. Further, no objective evidence exists that the employing establishment disseminated confidential information to appellant's coworkers. One of appellant's coworkers became aware of appellant's disciplinary letter only when the coworker asked appellant about the nature of the letter. Although appellant believed that her employer was insensitive in urging her to return to work shortly after her son's death, there is no evidence that the supervisor acted abusively in this regard.<sup>11</sup>

With regard to her allegations of harassment by her supervisor, the Board notes that to the extent that disputes and incidents alleged as constituting harassment by a supervisor are

---

<sup>7</sup> *Id.*

<sup>8</sup> *Daryl R. Davis*, 45 ECAB 907 (1994).

<sup>9</sup> *Abe E. Scott*, 45 ECAB 164 (1993).

<sup>10</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

<sup>11</sup> *Lillian Cutler*, *supra* note 3 (Mere perceptions and feelings are not compensable under the Act.).

established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>12</sup> However, for harassment to give rise to a compensable factor of employment, there must be evidence that the implicated acts did, in fact, occur as alleged. Mere perceptions of harassment are not compensable under the Act.<sup>13</sup> In the instant case, there is an October 14, 1994 note from appellant alleging that Mr. Rodon yelled at her for using line number 2 of the phone as it was a devoted business line. The record, however, does not contain any further information indicating that Mr. Rodon acted in an abusive manner toward appellant. Thus, as appellant has not provided any corroborating evidence that the alleged harassment did, in fact, occur she has not established a compensable employment factor.

Appellant has not submitted any evidence supporting her allegation that her coworkers became aware of her job-related stress claim because her supervisor left her leave requests in open view on his desk. The Board has generally held that mere allegations by a claimant are insufficient without evidence corroborating the allegations.<sup>14</sup> Although appellant has provided vague testimony in this regard, there is no specific information as to the approximate date of the incident or person involved. Further, there is no objective evidence that the employer erred or acted unreasonably in the handling of the form.

Accordingly, the Board finds that appellant has not established any of her allegations as compensable factors of her federal employment. Since she has not substantiated a compensable factor of employment as contributing to her condition, she has not established an emotional condition in the performance of duty. In the absence of a compensable work factor, the Board will not address the medical evidence on the issue of causal relationship.<sup>15</sup>

---

<sup>12</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>13</sup> *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>14</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991); *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each of these cases the Board has looked beyond appellant's allegations of unfair treatment to determine if there was evidence corroborating such allegations).

<sup>15</sup> See *Margaret S. Krzycki*, *supra* note 6.

The April 15, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
July 15, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member