

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTONIA SCOTTINO and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-2899; Submitted on the Record;
Issued July 13, 1999*

DECISION and ORDER

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

The issue is whether appellant has established an emotional condition causally related to compensable factors of her federal employment.

In the present case, appellant filed an occupational claim on March 5, 1996, alleging that she sustained emotional stress in the course of her federal employment.¹ In a narrative statement, appellant alleged that she sustained an emotional stress and resulting physical symptoms, such as tightening of the chest and intestinal problems, as a result of: (1) a change from a Monday through Friday schedule to a rotating schedule, which was made "in a discriminating way," (2) having supervisors "constantly questioning my work," (3) on April 4, 1996, she needed to use the only computer in the office to complete her work, but was unable to access the computer because two supervisors were using the computer.

By decision dated July 12, 1996, the Office denied the claim on the grounds that she had not substantiated a compensable factor of employment. In a decision dated January 3, 1997, the Office denied appellant's request for reconsideration without review of the merits of the claim.

The Board has reviewed the record and finds that appellant has not established an emotional condition in the performance of duty.

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 factors of her federal employment.² To establish her claim that she

¹ Appellant also filed a traumatic injury claim on April 22, 1996, on which she reiterated allegations raised in the prior claim, and also discussed an April 4, 1996 incident. The Office of Workers' Compensation Programs considered all of the allegations in developing the occupational claim.

² *Pamela R. Rice*, 38 ECAB 838 (1987).

sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁵ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁶

With respect to the allegation of a schedule change, it appears that appellant has raised two different issues concerning the change to a rotating schedule. Appellant stated that the schedule change was made "in a discriminating way" and she indicated that she filed a grievance and an Equal Employment Opportunity (EEO) complaint. To the extent that appellant is alleging that the decision to change her schedule constituted discrimination, there must be probative evidence that discrimination did occur.⁷ In this case, appellant did not submit any evidence with respect to an EEO action or otherwise submit probative evidence establishing a claim based on discrimination. Appellant also appeared to discuss the effect of the schedule change on her work, stating that instead of having extra work on Mondays, there were now two days that she had extra work. There are circumstances when a schedule change can result in a compensable factor of employment as it relates to the performance of assigned duties⁸ and the Board has

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁶ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *Anne L. Livermore*, *supra* note 5.

⁸ See *Gloria Swanson*, 43 ECAB 161 (1991) and the cases cited therein.

recognized that overwork can be a compensable factor.⁹ To the extent that appellant may be alleging she was overworked as a result of the schedule change, she must submit additional factual detail and other evidence supporting that she was overworked.¹⁰ She has not done so in this case. The Board finds that appellant has not established a compensable factor of employment with respect to a schedule change.

Appellant alleged that she was subject to constant monitoring and questioning of her work, asserting that a supervisor would often come into the computer room and ask appellant what she was doing. The monitoring of an employee is an administrative function¹¹ and therefore is compensable only to the extent there is error or abuse. Appellant has not provided supporting evidence to establish error or abuse in this case.

With regard to the April 4, 1996 incident, appellant stated that when she found her supervisor on the computer, she told her supervisors that she had to do some work on the computer, her supervisors remained on the computer. According to appellant, she returned every 15 minutes or so for approximately the next hour, but was unable to gain access to the computer. Appellant had indicated that she normally had sufficient access to the computer to perform her work; her reaction to the described incidents on April 4, 1996 appeared to be based on the perception that the actions of her supervisors were intentional and therefore erroneous. In order to establish a compensable factor of employment, there must be evidence of error or abuse. There is a witness statement that confirms that appellant was not able to access the computer because it was being used by the supervisors, but there is no probative evidence establishing that the supervisors acted unreasonably.

Accordingly, the Board finds that appellant has not substantiated a compensable factor of employment as contributing to an injury. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹²

⁹ *Sandra F. Powell*, 45 ECAB 877 (1994).

¹⁰ *Id.*

¹¹ *See Jimmy Gilbreath*, 44 ECAB 555 (1993).

¹² *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decisions of the Office of Workers' Compensation Programs dated January 3, 1997 and July 12, 1996 are affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member