

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS J. ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Bala Cynwyd, Pa.

*Docket No. 98-118; Submitted on the Record;
Issued June 11, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On January 31, 1997 appellant, then a 48-year-old inspection service technician, filed a notice of occupational disease, alleging that she suffered stress as a result of her federal employment. Appellant indicated that she realized that the disease or illness was caused or aggravated by her employment on January 31, 1997. In this regard, she stated that she was constantly harassed and treated differently than others. Appellant stated that she told her supervisor of her disabilities, but that the supervisor compared her work to other employees and told her she needed to do better. She also indicated that her supervisor discussed her leave record with her. Appellant stopped working on January 31, 1997.

On February 3, 1997 Dr. Jon Bjornson, a Board-certified psychiatrist and neurologist, indicated that appellant was fit for duty. On February 6, 1997 Dr. Ronald E. Rossman, an internist, indicated that appellant was fit for duty. On February 7, 1997 Dr. Evangelista stated that appellant could return to work if she avoided a stressful environment.

On February 12, 1997 the employing establishment advised appellant that she had been found fit for duty.

On February 18, 1997 the employing establishment indicated that appellant had been found fit for duty. It stated that appellant should return to duty or provide evidence of incapacitation by February 24, 1997 or appellant's absence since February 13, 1997 would be considered absence without official leave.

On March 11, 1997 the employing establishment indicated that on January 31, 1997 appellant's supervisor discussed with her the backlog in processing forms. The employing establishment indicated that the supervisor attempted to identify the reasons for the backlog and

requested appellant's input. The employing establishment indicated that during this discussion appellant requested a leave slip to seek medical treatment as she was feeling stressed.

On March 25, 1997 the Office of Workers' Compensation Programs requested additional information including detailed descriptions of the employment-related conditions or incidents which appellant believed contributed to her illness. Appellant was given 30 days to respond.

On April 5, 1997 appellant described the conditions or incidents that contributed to her illness. Appellant indicated that on January 31, 1997 Supervisor Jane Caruso discussed her work performance with the 1510s, indicated that she was behind production and compared her output to coworker Rebecca Triplett's. She also indicated that Ms. Caruso discussed her leave usage during the past year. Appellant also stated that she was denied assistance in finishing the backed-up Form 1510s. Appellant stated that she was constantly harassed by Ms. Caruso and Supervisor Linda Klaus. She indicated that she was a victim of racial disparity and unjust job distribution. Appellant stated that Ms. Caruso proofread her typing and made mistakes in doing so. Appellant stated that Ms. Caruso checked on the length of her work breaks without checking on the breaks of other employees. Appellant stated that Ms. Klaus assigned her two jobs, one in the mailroom and one working the Form 1510s. She stated that other employees were only assigned one job. Appellant stated that this was too much work for her, but that Ms. Caruso denied her assistance in completing the jobs. She indicated that her jobs were later completed by two men when she went on a detail. Appellant further indicated that she was displeased with being sent to the CTU unit for a detail. She stated that when she returned to Ms. Caruso's section she was assigned the "dirty work." Appellant stated her duties were not within her physical limitations and that Ms. Caruso requested medical documentation to support appellant's assertion. Appellant indicated that she was required to do more work than other employees. She indicated that Joe Naab, a coworker, received a performance award for his work on the Form 1510s yet she did this work and other duties and received no such award. Appellant stated that in August 1996 she filed an Equal Employment Opportunity (EEO) complaint against Ms. Caruso and Ms. Klaus for race and physical disabilities. Finally, appellant indicated that the employing establishment was sending harassing letters stating they were not accepting her medical evidence and that they would start removal proceedings.

On June 13, 1997 Ms. Caruso responded to appellant's allegations. Ms. Caruso stated that she met with appellant on January 31, 1997 to discuss the Form 1510 program. She stated that she informed appellant that the program was behind and asked her what she thought the problem was. Ms. Caruso indicated that appellant told her she was behind because she assisted in other areas. She indicated that she told appellant that because her assistance was limited to an hour or two on Mondays in the mailroom and covering afternoon breaks for the receptionist that this should not get her behind. Ms. Caruso stated that she told appellant that other employees were doing almost twice as much work. She stated that she reviewed appellant's leave for the previous year. Ms. Caruso indicated that the conversation was cordial until appellant walked out. She indicated that she did review appellant's typing to help her work and that appellant's frequent absences from the work site resulted in her inquiring about appellant's whereabouts. Ms. Caruso stated that she distributed work fairly and that appellant did receive some assistance with the Form 1510s. She denied that appellant was assigned "dirty work." Ms. Caruso stated that appellant was assigned the Form 1510s duty she requested, but that appellant rescinded her

request upon learning she would have to cover for the mailroom on Mondays. She indicated that since all the other duties had been assigned to other workers, she could not reassign appellant. Ms. Caruso stated that appellant's assigned duties with the Form 1510s were within her physical abilities. She stated that appellant always had a backlog of Form 1510s unlike coworker Mr. Naab. She stated that Mr. Naab and coworker, Emil Maternia, did not have to relieve the receptionist for breaks because they covered the phones at the end of the day. Ms. Caruso stated that she referred appellant's transfer requests to the Human Resources department. Finally, Ms. Caruso indicated that the correspondence sent to appellant's address was not done to harass her, but to request medical documentation stating her inability to work.

On June 13, 1997 Ms. Klaus addressed appellant's allegations. She indicated that appellant was never required to perform any work which other employees were not required to do. She indicated that appellant's work in the mailroom was limited to two hours per day. Ms. Klaus stated that appellant also prepared Form 1510s. She stated that appellant could sit, stand, or lean while performing these duties and that she could take breaks. Ms. Klaus indicated that appellant was given assistance in completing her duties, but that she always had a substantial backlog. She stated that Ms. Caruso discussed ways to deal with the backlog on January 31, 1997. Ms. Klaus indicated that appellant used large amounts of leave. She indicated that appellant had been directed to report for duty on several occasions unless she could provide medical documentation substantiating her absence. Ms. Klaus indicated that on January 31, 1997 she advised appellant that her backlog needed to be reduced. She indicated that appellant initiated most of the assignment changes. Ms. Klaus denied harassing letters were sent to appellant and stated that she merely sought medical documentation for her absence. She denied that appellant was treated differently from other workers.

On June 19, 1997 the employing establishment indicated that appellant had been given the opportunity to provide medical documentation supporting her absence from work, but she failed to do so. It further indicated that appellant's condition was self-generating reaction to its legitimate management actions.

By decision dated September 5, 1997, the Office denied the claim for compensation because the evidence failed to establish that the claimed injury occurred in the performance of duty.

The Board finds that appellant has not met her burden of proof to establish 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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

In the present case, appellant described the incidents and conditions of her employment to which she attributed her emotional condition in a April 5, 1997 letter. Most of the incidents and conditions, however, are not considered compensable factors of employment. Appellant indicated that her supervisor discussed her job performance with her on January 31, 1997, indicating that she was behind in production and less productive than other workers. Such counseling concerns an administrative matter and is not compensable absent evidence of error or abuse.⁵ Appellant also indicated that Ms. Caruso discussed her leave usage with her during the January 31, 1997 meeting. Matters involving leave usage are also generally not considered compensable employment factors absent evidence of error or abuse.⁶ Appellant also indicated that Ms. Caruso proofread her typing and monitored her breaks. The monitoring of work by a supervisor is an administrative function of the employer and is not compensable.⁷ Appellant further indicated that she was displeased with being sent to the CTU unit on a detail and that she was always assigned the "dirty work." The assignment of duties, however, is an administrative function of the employing establishment and is also not compensable absent evidence of error or abuse.⁸ Appellant further indicated that she was not given a performance award despite the fact another employee received one and did similar work. Inasmuch as a performance award involves an appraisal of appellant's performance, it also constitutes administrative function and is not compensable unless the employing establishment acted unreasonably.⁹ Appellant also

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

⁵ *Effie O. Morris*, 44 ECAB 470 (1993).

⁶ *Margreate Lublin*, 44 ECAB 945 (1993).

⁷ *Darryl R. Davis*, 45 ECAB 907 (1994).

⁸ *Id.*

⁹ *Sammy N. Cash*, 46 ECAB 419 (1995).

contended that the employing establishment harassed her by sending letters stating that they were not accepting her medical evidence and would remove her. The employing establishment sent appellant letters urging her to submit medical documentation of her inability to work. These warning letters constituted an administrative matter unrelated to appellant's regular or specially assigned duties are not compensable factors of employment.¹⁰

As noted above, appellant's reaction to these administrative matters is not compensable absent evidence or error or abuse. The only indication that appellant gave that such error or abuse occurred are her blanket statements that she was constantly harassed by her supervisors. Appellant also alleged that she was a victim of racial disparity and unjust job distribution and that she filed an EEO complaint. Appellant has failed to submit any evidence, however, supporting her assertions of harassment or discrimination. Without such corroborating evidence, appellant fails to establish that such harassment or discrimination occurred.¹¹ Mere perceptions of harassment or discrimination are not compensable under the Act.¹²

Appellant also contended that she was denied assistance in completing her duties with the Form 1510s. She indicated that she was required to do two jobs while others only had one job. While appellant's reaction to a heavy work load could be considered a compensable factor of employment, appellant must substantiate her allegations.¹³ In this case, appellant submitted no evidence establishing that her work load was too heavy and appellant's supervisor disputed that appellant's work load was too strenuous. Consequently, appellant failed to factually establish her work load as a compensable factor of employment.

Finally, appellant indicated that she was assigned duties outside her physical restrictions. Work outside of physical limitations can constitute a compensable factor of employment if substantiated by the record.¹⁴ Appellant's supervisor, however, indicated that appellant's duties were within her physical abilities. Moreover, appellant failed to submit any evidence establishing that her duties were outside her physical limitations. This alleged compensable factor of employment, therefore, is not established as factual.

Accordingly, because appellant has failed to establish a compensable factor of employment, she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated September 5, 1997 is affirmed.

Dated, Washington, D.C.

¹⁰ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹¹ *David W. Shirey*, 42 ECAB 783 (1991).

¹² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹³ *Alice M. Washington*, 46 ECAB 382 (1984).

¹⁴ *Diane C. Bernard*, 45 ECAB 223 (1993).

June 11, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member