

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONA P. HILL and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

*Docket No. 97-1515; Submitted on the Record;
Issued March 4, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On April 17, 1996 appellant, then a 44-year-old LSM operator, filed a claim alleging that on March 20, 1996 she developed "stress" due to management harassment. Appellant had been off work following a 1993 back contusion injury, had her compensation benefits terminated effective October 20, 1995 for her refusal to accept suitable work and returned to work on March 20, 1996.

Appellant alleged that she was harassed by Richard Lethridge, appellant's supervisor, on March 20, 1996. She alleged that Mr. Lethridge stated: "You must have a chip on your shoulder and what I say goes." Appellant alleged that on March 21, 1996 Senior Manager of Distribution Operations, Herb Gauthier stated "you [have] been to (your) Congressman, well we do n[o]t care what your doctor said, you (are) going to do what we want you to do, a honest day work for a honest day pay, we [wi]ll be observing you." Appellant alleged that Mary Humphrey, a supervisor, stated "a doctor's slip do[es] n[o]t mean anything, you were given a work offer and you are not limited duty, you are light duty and did you hear what I said, give me that 1260." Appellant also alleged that she was "forced" to work against her doctor's orders and that she had received no Office of Workers' Compensation Programs "payment" since October 1995 and no health benefits since the beginning of 1995.

In a supplemental statement appellant referenced "physical and emotional stress" as a result of having to deal with carpal tunnel syndrome and de Quervains, and she also mentioned having a back condition. Appellant claimed that she had a difficult time adjusting to her limitations and that her employing establishment "forced" her to work outside her limitations. She alleged that she was spoken to in a "non-human way" making her feel as if she did not have a mind and/or was not capable of using it. Appellant also stated that she had experienced

“emotional stress” due to payment interruption over a six-month period of time and due to not having her health benefits deducted.

File number A13-0790102 claim for de Quervains tendinitis was denied and file number A13-1026371 claim was accepted for back contusion, but compensation was terminated in October 1995 for appellant’s refusal to accept suitable work.

Submitted with appellant’s initial claim form was a statement from Ms. Humphrey, Supervisor Distribution Operations -- Tour 3, to Elna Lethridge, Acting Senior Injury Compensation Specialist, which provided the following responses to appellant’s allegations. Ms. Humphrey stated that appellant returned to duty on March 20, 1996, and was assigned to the prepline, a part of her job offer. Mr. Lethridge discovered appellant reading a computerized bible and observed appellant writing on a notepad, and he advised her to perform her duties. On March 21, 1996 a meeting was held with appellant, Mr. Gauthier, Rony Alexander and Ms. Humphrey, where it was determined that appellant would be assigned to Operation 030. Mr. Lethridge indicated that appellant was very negative in the meeting. Mr. Lethridge supervised the area in which appellant was assigned, and he indicated that appellant was “unproductive, constantly sitting without distributing letters for intervals.” It was noted that later in her shift that day appellant went to the medical unit and then left work. The employing establishment denied not adhering to appellant’s work restrictions.

Mr. Lethridge also provided a statement in which he clarified his statement to appellant regarding a “chip on her shoulder.” He explained what his comment actually meant, which was why was appellant being so rude and disrespectful to him and to management.

Also received were documents discussing appellant’s limited duty, including a letter dated April 18, 1996 from H. Mario Valdez, Manager Distribution Operations -- Tour 3, which indicated that appellant was to return to work despite no specific position being offered. He indicated that appellant would be required to perform “only duties identified that were within her physical limitations.”

Both appellant and the employing establishment were advised by letters dated June 28, 1996 that additional information was needed. Appellant was advised to clarify her allegations by providing additional details and corroborative evidence. The employing establishment was asked to comment further on appellant’s allegations.

In response the Office received a letter from appellant indicating that additional factual and medical evidence was forthcoming. The Office also received an April 19, 1996 x-ray report referencing appellant’s pelvis, right hip and right knee. It received a Kaiser Permanente March 22, 1996 visit verification slip lacking any history of injury, diagnosis or etiologic relationship statement. Medical evidence referencing appellant’s prior orthopedic problems was also received.

By statement dated July 28, 1996, appellant referenced her not being paid and having her health benefits terminated. She indicated that on March 20, 1996 she was made to walk a long way to speak with a supervisor. Appellant stated that she provided the supervisor with her work restrictions and was advised to report to another work area. She also alleged that the supervisor

in charge Mr. Lethridge, indicated that he was “watching” her which made her feel fearful. Appellant alleged that Mr. Gauthier “yelled” at her and spoke rudely to her, that she was asked to repetitively place mail in a chubby hole, that she felt “put on display,” and that she was made to feel like a child. She claimed that she was seeing a therapist as a result of feeling used and mistreated, and that she was seeing a psychiatrist because she was annoyed being accused of not reporting to work, and that she currently cried a lot and had continual headaches.

Ms. Humphrey responded, stating that the allegations by appellant were totally untrue, that appellant’s de Quervain’s claim was denied, and that a light-duty assignment was not requested by appellant. She noted that appellant’s back claim had been accepted, and that a suitable job offer within her work restrictions was made. Ms. Humphrey indicated that appellant was treated by her in a professional manner at all times.

Mr. Gauthier indicated that he commented that appellant had contacted her congressional representative, and denied telling appellant that she was going to do what we want her to do; however, he noted that a comment was made regarding an honest day’s work for an honest day’s pay, and that they would be observing appellant to see how she was doing. He ended by stating that he treated appellant with dignity and respect, and in a professional manner at all times.

A medical report from Dr. Barry M. Stone, a Board-certified psychiatrist, was also submitted, which indicated that appellant was depressed and noted that she was having “continuing battles with the [employing establishment] and the Office of Workers’ Compensation Programs over receiving the monies that she thought was due to her.” He added that “her difficulty in being able to maneuver her way through the [employing establishment] and Workers’ Comp[ensation] system has greatly added to her depression.” Dr. Stone opined that appellant’s initial depression started as a result of her back injury and was aggravated by her return to work in March 1996, and he opined that the combination of appellant’s back injury, her access to health benefits, and her being treated in a disrespectful way resulted in her being depressed.

Also received was an October 31, 1996 report from Dr. Mary Patton, a Board-certified orthopedic surgeon, which discussed appellant’s orthopedic problems, and noted a flare-up appellant’s de Quervian’s tenosynovitis and carpal tunnel syndrome as a result of her returning to work in March 1996.

By decision dated March 11, 1997, the Office rejected appellant’s claim for an emotional condition, finding that she failed to establish that she sustained an emotional condition as a result of compensable factors of her federal employment. The Office found that, although appellant alleged that Mr. Lethridge, Mr. Gauthier and Ms. Humphrey all spoke to her in a derogatory manner, they all denied doing so, and denied as well not adhering to her work restrictions. As appellant provided no corroborating evidence, and as appellant was moved around to different jobs in attempts to honor her work restrictions, the Office found that the record did not support that any harassment occurred. The Office further found that the comments which were admitted to by the supervisors were not harassing or disrespectful. Also, they found that stress as a result of “non-payment issues” and health benefits concerns is not compensable under the Federal Employees’ Compensation Act.

The Board finds that appellant has failed to establish that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹

To establish appellant’s occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized 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.² Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.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 concept of workers’ compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee’s emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Id.*

⁴ *Donna Faye Cardwell*, *supra* note 2; *see also Lillian Cutler*, 28 ECAB 125 (1976).

employment, and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be “in the performance of duty.”⁶

When working conditions are alleged as factors in causing 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.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant’s emotional condition, then the medical evidence of record need not be considered. In the present case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.

In the present case, appellant did not allege that she developed an emotional condition arising out of her regular or specially assigned duties, or out of specific requirements imposed by her employment. She alleged, for the most part, that her condition was caused by supervisory harassment. The supervisors, however, denied that any such harassment occurred. The Board has held that actions of an employee’s supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹⁰ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹¹ The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of her allegations. Appellant has the burden of establishing a factual basis for her allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant’s employer. Additionally, the statements made by the

⁵ *Id.*

⁶ See *Joseph C. Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁷ See *Barbara Bush*, 38 ECAB 710 (1987).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

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

¹¹ See *Ruthie M. Evans*, *supra* note 8.

supervisors were clarified, and no evidence of harassment was found. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Appellant also alleged that she was forced to work outside of her work restrictions but she presented no evidence to support this contention and again the supervisors denied that it occurred. The Board, therefore, cannot accept this contention as being factual as it is not supported by the record.

Lastly, appellant alleged that receiving no payment since October 1995 and no health benefits caused her depression and stress. However, the reason appellant received no payment since October 1995 was related to another claim not before the Board on this appeal, and was the result of a termination of her compensation benefits based upon her refusal to accept suitable work in relation to the other claim.¹² Further, the Board notes that the matters involving the processing of compensation claims by the employing establishment or the Office, or actions resulting from compensation claims processing and handling, bear no relation to appellant's day-to-day or specially assigned duties, and therefore are not employment factors under the Act.¹³

As appellant has implicated no compensable factors of employment in the causation of her emotional condition, she has failed to establish the first essential element of her claim, and the medical evidence need not be considered.

¹² See 20 C.F.R. § 501.2(c).

¹³ See *Thomas J. Costello*, 43 ECAB 951 (1992); *George A. Ross*, 43 ECAB 346 (1991).

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 11, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 4, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member