

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA K. RILLEY and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Milwaukee, WI

*Docket No. 98-331; Submitted on the Record;  
Issued November 8, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On March 10, 1997 appellant, then a 41-year-old flat sorting machine clerk, filed a claim for compensation benefits alleging that she sustained an emotional condition which she attributed to factors of her employment.

In a report dated March 6, 1997, Dr. Walter T. Davison, a Board-certified psychiatrist, stated that appellant was depressed and incapable of working. Dr. Davison stated that he anticipated four to six weeks of active treatment before she could return to work and that she might need a transfer of duty in the future. He did not indicate the cause of the condition.

By decision dated May 5, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that she had sustained an emotional condition causally related to compensable factors of her employment.

By letter dated May 12, 1997, appellant requested reconsideration of the denial of her claim. She stated that on November 19, 1996 she was put into a nonduty, nonpay status for signing a letter questioning the treatment that employees were receiving from their immediate supervisors. Appellant stated that the plant manager determined that the letter was threatening and ordered an investigation but that an investigator later determined that the letter was not threatening. She stated that in January 1997 she was demoted as a supervisor and assigned to be a flat sorting clerk and that when she returned to work in February 1997 her supervisor came into her work area and stared at her for approximately 30 minutes which made her very uncomfortable. Appellant stated that on February 27, 1997 she received a letter from the employing establishment placing her on administrative leave from February 27 to March 6, 1997.<sup>1</sup> She stated that she had no unusual stress outside of her federal employment.

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<sup>1</sup> The record contains a February 27, 1997 letter to appellant from the employing establishment placing her on administrative leave with pay pending the results of the investigation into allegations that she made threats to a supervisor.

Appellant alleged that her supervisor treated her in a demeaning manner and that on several occasions, in staff meetings or on the workroom floor, he had hit the table and screamed at her and compared her to a second grade child.

In a report dated March 6, 1997, Dr. Davison related that appellant had been off work from November 19, 1996 to February 15, 1997 for disciplinary actions because she and four other employees were involved in an altercation with their supervisor. He related that appellant felt mistreated at work and also felt that she was being harassed. Dr. Davison diagnosed mixed anxiety disorder and mixed personality disorder and stated that appellant needed additional psychotherapy. He provided no opinion as to the cause of appellant's condition but noted that her condition was probably a long-standing mental problem.

By decision dated August 13, 1997, the Office denied appellant's request for reconsideration.

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 his or 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.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an 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.<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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387, 391 (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 (1993).

<sup>6</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

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.<sup>7</sup>

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegation that the employing establishment unreasonably monitored her activities at work, the Board finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.<sup>8</sup> Although the monitoring of employee activities at work is generally related to the employment, this matter is an administrative function of the employer, and not a duty of the employee.<sup>9</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>10</sup> In this case, appellant alleged that her supervisor stared at her for 30 minutes on one occasion which made her uncomfortable. However, she presented insufficient evidence that the employing establishment erred or acted abusively in the monitoring of her activities on this occasion. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of her supervisor contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>11</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>12</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.<sup>13</sup> Appellant alleged that her supervisor treated her in a demeaning manner and hit a table and screamed at her but she provided no corroborating evidence, such as witness statements, to establish her allegations as

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

<sup>8</sup> *See Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>12</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>13</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

factual.<sup>14</sup> Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding the investigation of appellant concerning a plant manager's belief that a letter she signed which questioned the treatment of employees by supervisors was of a threatening nature, the Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.<sup>15</sup> However, as noted above, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In this case, an investigator determined that the letter in question was not threatening but the evidence of record does not establish error or abuse in the plant manager's action in initiating the investigation into the letter. There is no evidence to indicate that the investigation was requested by the plant manager for any reason other than that the plant manager believed that the letter constituted a threat. Although appellant alleged that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such an assertion. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that she was unfairly demoted, disability is not covered where it results from frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>16</sup> Thus, appellant has not established a compensable factor of employment in this regard.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>17</sup>

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<sup>14</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>15</sup> *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

<sup>16</sup> See *Eileen P. Corigliano*, 45 ECAB 581, 583-84 (1994); *Tanya A. Gaines*, 44 ECAB 923, 934 (1993).

<sup>17</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, *supra* note 6.

The decisions of the Office of Workers' Compensation Programs dated August 13 and May 5, 1997 are affirmed.

Dated, Washington, D.C.  
November 8, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member