

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARIE BIEKSHA and U.S. POSTAL SERVICE,  
POST OFFICE, Bloomfield, NJ

*Docket No. 98-678; Submitted on the Record;  
Issued November 10, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On October 23, 1995 appellant, a mailhandler, filed a claim asserting that her disability beginning October 19, 1995 was causally related to her federal employment.<sup>1</sup> The Office of Workers' Compensation Programs requested additional information. Appellant replied that her supervisor harassed her; that he constantly changed her work assignments without giving her time to complete them; that he constantly rode her back for trivial things; that he held her to safety standards while allowing others, including himself, to violate them; that he gave others preferential treatment and that he overlooked her for overtime work. Appellant stated that she filed a grievance concerning the overtime issue, which was resolved by settlement.

Appellant's supervisor replied that appellant's allegations were baseless, that all employees under his supervision were afforded fair and equal treatment with maximum professionalism. He noted that appellant's Equal Employment Opportunity claim was investigated and found to be without merit.

In a decision dated July 18, 1996, the Office denied appellant's claim on the grounds that the evidence failed to demonstrate that the claimed injury occurred in the performance of duty.

Appellant requested an oral hearing before an Office hearing representative. At the hearing, which was held on July 8, 1997 appellant and two coworkers appeared and testified. One coworker supported that the supervisor blatantly picked appellant out for greater scrutiny,

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<sup>1</sup> Appellant filed an earlier claim for an employment-related emotional condition, which was accepted for the condition of depression in File Number 02-0690960. She filed a claim of recurrence on October 23, 1995 but because she implicated new employment incidents, the claim of recurrence was developed as a new occupational injury claim under File Number 02-0712105. It is from this new injury claim that appellant seeks Board review.

that he favored other employees and did not hold them to the same standards. The other coworker, appellant's husband, worked a different shift but supported appellant's testimony concerning the supervisor's demeanor during a smoking-break incident and supported that the testimony given by appellant at the hearing was consistent with her contemporaneous complaints to him about the supervisor's conduct.

The Office sent a copy of the hearing transcript to the employing establishment and allowed 15 days to submit comments or addition material for the record. Having received no response, the Office hearing representative issued a final decision on October 1, 1997 affirming the denial of appellant's claim.

The Board finds that the evidence of record fails to establish that appellant sustained an emotional condition while in the performance of duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>2</sup> An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,<sup>3</sup> neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;<sup>4</sup> investigations;<sup>5</sup> determinations concerning promotions and the work environment;<sup>6</sup> discussions about an SF-171;<sup>7</sup> reassignment and subsequent denial of requests for transfer;<sup>8</sup> discussion about the employee's relationship with other supervisors;<sup>9</sup> or the monitoring of work by a supervisor.<sup>10</sup>

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.<sup>11</sup> Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge her

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Joseph F. McHale*, 45 ECAB 669 (1994).

<sup>4</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>5</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>6</sup> *Merriett J. Kauffman*, 45 ECAB 696 (1994).

<sup>7</sup> *Lorna R. Strong*, 45 ECAB 470 (1994).

<sup>8</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>9</sup> *Raul Campbell*, 45 ECAB 869 (1994).

<sup>10</sup> *Daryl R. Davis*, 45 ECAB 907 (1994).

<sup>11</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.<sup>12</sup>

Appellant implicates error or abuse by her supervisor in two respects. First, she asserts a component of harassment, including such actions as constantly changing her work assignments without giving her time to complete them and constantly riding her for trivial things. She has failed to submit probative evidence, however, that the manner in which her supervisor discharged his duties or exercised his discretion in administrative or personnel matters was in fact erroneous or abusive in this regard. The record indicates that she pursued administrative relief through appropriate channels but did not succeed in proving her claims. Without other probative evidence substantiating error or abuse in assigning work or monitoring activities, appellant's own perception is not sufficient to bring such matters within the scope of coverage of workers' compensation.

Second, appellant asserts a component of discrimination or disparate treatment, including such actions as holding her to safety standards while allowing others to violate them and generally giving others preferential treatment. To support this aspect of her claim appellant offered the testimony of two coworkers at the July 8, 1997 hearing before an Office hearing representative. The testimony of one coworker, her husband, provided little support as he worked a different shift and generally could only confirm the consistency of appellant's testimony. The testimony of the other coworker tended to corroborate appellant's assertion that the supervisor treated her differently than he did other workers. This testimony supported that the supervisor monitored appellant's coffee runs and counseled her for taking 20-minute breaks but did not monitor others or counsel those who took an hour. This testimony also supported that the supervisor picked out appellant to give her conflicting instructions and that he did not hold other workers to the policy of giving notice when leaving the work floor. The Board finds, however, that this evidence fails to establish that the actions of the supervisor in monitoring appellant's leave or coffee runs rose to the level of error or abuse.

As the weight of the evidence fails to establish error or abuse by the supervisor in an administrative or personnel matter, the Board finds that appellant has failed to establish a compensable factor of employment.

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<sup>12</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

The October 1, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
November 10, 1999

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member