

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOVAUNDA BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Coppel, TX

*Docket No. 98-886; Submitted on the Record;
Issued November 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

In the present case, appellant filed a claim on September 14, 1995, alleging that she sustained emotional stress and depression as a result of losing her position as an acting supervisor. In a narrative statement, she indicated that she was told by manager George Hackett on March 17, 1995 that she would no longer be allowed to supervise because she was "accident prone." The record indicates that appellant had two prior employment injuries: a June 1994 injury in which she was struck by a piece of heavy equipment; and a March 13, 1995 injury when she slipped and fell.

By decision dated April 23, 1996, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established an injury causally related to compensable employment factors. Appellant requested a hearing before an Office hearing representative and a hearing was held on March 26, 1997. At the hearing, appellant appeared to expand her claim. She stated that there was harassment and intimidation, which became worse after she wrote a letter to the postmaster general. Appellant asserted that management edited her machine every day, instead of being randomly selected; that the employing establishment made false statements with respect to her compensation claims, and she was told there was no work available although there was work she could have been doing. According to appellant, there was continual harassment and she had filed seven complaints with the Equal Employment Opportunity Commission (EEOC).

By decision dated June 9, 1997, the hearing representative affirmed the April 23, 1996 Office decision. In a decision dated December 17, 1997, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to compensable factors of her federal employment.

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.¹ To establish her claim that she 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.²

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.³

In the present case, appellant alleged that after her second employment injury on March 13, 1995, she was no longer permitted to be an acting supervisor. The decision as to which employees may serve as acting supervisors is an administrative or personnel matter. Although the handling of such personnel matters is generally related to employment, it is an administrative function of the employer, not a duty of the employee.⁴ An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.⁵ Therefore appellant may establish a compensable factor in this regard only if she can establish error or abuse by the employing establishment. In this case, the record contains an April 24, 1995 memorandum from the manager, Mr. Hackett, stating that every supervisor had the responsibility to prevent accidents, and appellant had set a poor example with respect to safety practices. Mr. Hackett concluded that if appellant was allowed to continue as an acting supervisor, it would undermine the safety program at the employing establishment. Although appellant has alleged that the administrative action was abusive, and that other employees with prior injuries had continued to

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

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

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995).

⁵ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

be acting supervisors, the record does not contain any affirmative evidence that the administrative decision to remove appellant from acting supervisor was erroneous or abusive. The manager provided an explanation for the administrative decision, and the Board is unable to find probative evidence of error or abuse in this case. To the extent that appellant alleges an emotional reaction from the actual loss of supervisor responsibilities, this would not be compensable. As noted above, frustration over not being able to hold a particular position is outside the scope of coverage under the Act.

With respect to the additional allegations of harassment and intimidation by the employing establishment, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁷

As noted above, appellant indicated that she had filed complaints before the EEOC and the record contains copies of such complaints.⁸ The record does not contain, however, any findings of harassment or discrimination, nor has appellant submitted other probative evidence that could establish a claim based on harassment or discrimination. The Board accordingly finds that appellant has not established a compensable factor in this regard.

Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁷ *Helen P. Allen*, 47 ECAB 141 (1995).

⁸ There is, for example, a complaint dated February 22, 1996 alleging discrimination based on race, sex, handicap and retaliation, with respect to not being allowed to continue as acting supervisor.

⁹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decisions of the Office of Workers' Compensation Programs dated December 17 and June 9, 1997 are affirmed.

Dated, Washington, D.C.
November 22, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member