

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARSHA A. COFFMAN and U.S. POSTAL SERVICE,
POST OFFICE, Hot Springs, AR

*Docket No. 97-1678; Submitted on the Record;
Issued October 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

On April 16, 1996 appellant, then a 45-year-old rural carrier, filed an occupational disease claim, alleging that she sustained work-related stress which began on March 13, 1996 and which she realized was causally related to her federal employment on March 25, 1996. Appellant stopped work on March 25, 1996. In a supplemental statement, appellant identified the following as causative factors of her work-related stress: approximately 10 to 11 years prior, Steve Vaughn attempted to kiss her and had made remarks about how she looked and her body since that time. Mr. Vaughn approached her on March 21, 1996 and said he had been dreaming about her. He then inquired about the status of appellant's marriage; he later asked appellant to move in with him; on March 25, 1996, a coworker of appellant's at another branch advised appellant that Mr. Vaughn had asked him questions about her and indicated that he believed the coworker and appellant had been involved sexually; although appellant reported Mr. Vaughn's actions to her immediate supervisor, no action or investigation was undertaken; on April 10, 1996, appellant's supervisor directed her to accompany him into a meeting with Mr. Vaughn in which Mr. Vaughn admitted that the incident 10 to 11 years ago had happened, but denied making any comments of a sexual nature and was very hostile; the employing establishment did not handle her occupational disease claim in a proper manner and delayed filing it; the employing establishment deducted appellant's absence from work from two paychecks and improperly denied her leave request for the time period that was deducted.

In a decision dated September 23, 1996, the Office denied appellant's claim on the grounds that she did not establish that an injury had occurred while in the performance of duty. By decision dated January 29, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish modification.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that she sustained an emotional condition while in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from factors such 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. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant has alleged several incidents which she asserts constituted harassment. Harassment by coworkers or supervisors may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.⁴ Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.⁵ A full review of the record indicates that appellant has not provided such probative and reliable evidence in the instant case. Initially, it is noted that the Office accepted as factual that a conversation took place between Mr. Vaughn and Mr. Scott in which Mr. Vaughn inquired about the nature of Mr. Scott's relationship with appellant and whether it was sexual. This conversation was relayed to appellant by Mr. Scott. While appellant alleged that Mr. Vaughn referred to her in an insulting manner as "good stuff" in his conversation with Mr. Scott, the statement from Mr. Scott does not corroborate that this remark was made. With respect to Mr.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *See Marie Boylan*, 45 ECAB 338 (1944); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Vaughn's alleged comments of March 21, 1996, there is evidence from Mr. Vaughn and Roger Marcum, the postmaster, refuting appellant's assertion that Mr. Vaughn made inappropriate and harassing comments to appellant on that day. In a letter dated April 5, 1996 by Alfred E. Muldoon to Tom Ranft, the district manager, he recounted several incidents in which he believed Mr. Vaughn and Mr. Marcum acted like "bull[ies]." He also noted that a female employee, who was being treated under the employee assistance program had serious problems with Mr. Vaughn, who had "backed her into her case and asked her for a kiss ... is always telling her what a nice body she has and how good she looks ... recently he went in her case and told her he had a dream about her last night ... and asked this female employee if she could move in with him." Mr. Muldoon also noted the conversation between Mr. Vaughn and appellant's male coworker. However, Mr. Muldoon did not specifically identify the female employee involved or address whether he had witnessed the incidents noted in his statement. Mr. Muldoon's letter appears to be a recitation of alleged incidents rather than an eyewitness account of the alleged events. Thus, this letter is not sufficient to corroborate appellant's allegations or substantiate her claim of harassment. Similarly, there are several statements from appellant's coworkers in which they indicate that appellant informed them of the incidents in March 1996. As none of appellant's coworkers and/or relatives actually witnessed the alleged incidents, their statements appear to recount her allegations but do not provide probative and reliable evidence to substantiate appellant's complaints.

Appellant also alleged that she was intimidated in a meeting with Mr. Vaughn and her supervisor on April 10, 1996. Mr. Tucker initially reported that Mr. Vaughn had conducted himself in a professional manner and that appellant acted in a questionable manner, however, he did not provide details of the discussion that took place until a follow-up letter. In a September 12, 1996 statement, Mr. Tucker indicated that in the meeting on April 10, 1996, Mr. Vaughn told appellant that he "heard what [appellant] planned to do and he was prepared to defend himself and his job. He said that he had retained an attorney and was not going to sit back and let her ruin his career." Neither statement by Mr. Tucker serves to support appellant's assertion that she was intimidated by Mr. Vaughn during the April 10, 1996 meeting. Mr. Vaughn's statement that he intended to defend himself does not appear unreasonable given the serious allegations of misconduct raised by appellant. Therefore, the record does not contain any sufficient corroboration of appellant's alleged incidents of harassment and she has not substantiated her claim that she was harassed while in the performance of duty. Appellant's perceptions of harassment are self-generated and are not compensable under the Act.

The decisions of the Office of Workers' Compensation Programs dated January 29, 1997 and September 23, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 7, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member