

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LYNN M. LARSON and U.S. POSTAL SERVICE,  
POST OFFICE, St. Paul, MN

*Docket No. 98-65; Submitted on the Record;  
Issued October 7, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of her federal employment.

In the present case, the Office of Workers' Compensation Programs had accepted that appellant, a custodian, sustained bilateral tendinitis in the performance of her federal employment. Appellant received temporary total disability from August 7, 1987 until December 13, 1991. She returned to work on December 14, 1991 in a modified custodial position. On May 29, 1992 appellant filed a claim alleging that she had sustained emotional stress because she had no real job duties in her light-duty position and she was harassed by her fellow employees. The Office denied appellant's claim by decision dated November 13, 1992, on the grounds that appellant had not established that she sustained an injury in the performance of her employment.

Appellant, thereafter, requested a hearing before an Office hearing representative. By decision dated July 26, 1994, the hearing representative affirmed the denial of the claim. The hearing representative found that appellant's allegation that her job as a modified cleaner was devoid of responsibility and that she had nothing to do was not a compensable factor of employment. The hearing representative explained that the Board had previously held that frustration at not being allowed to perform what an employee considers "meaningful" work is not a compensable factor of employment. The hearing representative also noted that while appellant alleged that she was harassed by other employees because of her light-duty assignment, appellant had not established the compensability of this allegation. The hearing representative stated that the employing establishment had obtained statements from three of the four individuals appellant had named. These individuals denied that they ever harassed appellant, but rather indicated that they had inquired how appellant was doing as she had been away from work for some time. The hearing representative concluded that appellant had not substantiated any allegation of harassment. The hearing representative also advised that mere perceptions and feelings of harassment or discrimination would not support an award of compensation.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized on July 26, 1994, is in accordance with the facts and the law in this case and hereby incorporates the findings and conclusions of the hearing representative.

On August 2, 1994 appellant's representative requested that the Office reconsider appellant's case. In support of his request for reconsideration he alleged that as appellant had sustained a work-related physical injury, which required that she be placed in light-duty employment, appellant's emotional condition sustained as a result of the light duty should be compensable. Appellant's representative also alleged that as appellant's day-to-day duties caused her emotional condition, she had alleged a compensable factor of employment. Appellant's representative submitted documentation with his request for reconsideration. Most of the materials submitted were previously of record, the only new evidence submitted with the request for reconsideration was an Office of Personnel Management form pertaining to appellant's application for Civil Service Retirement benefits. On this form, in response to the question "explain the impact of employee's absence on your work options." it was noted that appellant's position as "modified cleaner" did not provide productive work for the custodial staff because of appellant's job restrictions. In response to a question whether accommodation efforts had been successful, it was noted that "due to the constraints of employee's restrictions it was difficult to keep employee occupied for a full shift."

The Office denied modification of the prior decision, after merit review, on June 27, 1997.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of her federal employment.

Appellant's allegation that she was underworked and that she should have been offered other rehabilitation or training is not a compensable factor of employment under the Federal Employees' Compensation Act. As the Board explained in *Purvis Nettle*<sup>1</sup>, "with respect to appellant's feeling that he is being underutilized, appellant's assignment to duties for which he felt he was overqualified is not compensable under the Act. With respect to appellant's dissatisfaction with the limited-duty position which he felt were no longer challenging or interesting, ... dissatisfaction with the type of work assigned, or desire to perform different duties, does not come within the concept of coverage under the Act." Furthermore, as explained by the Board in *Michael Thomas Plante*,<sup>2</sup> inability to perform one's work duties due to the amount or type of work assigned may be compensable under the Act. However, where appellant alleges under work, appellant alleges just the opposite. Appellant in claiming under work is not stating that she is unable to perform her assigned work, but only that she would prefer additional work. Appellant is essentially requesting a more demanding or interesting work environment, and frustration of not being allowed to work in a particular environment is not a compensable

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<sup>1</sup> 44 ECAB 623 (1993).

<sup>2</sup> 44 ECAB 510 (1993).

factor of employment under the Act. Therefore even assuming that appellant was under worked, the Board concludes that appellant's allegation of under work in her light-duty position is not compensable under the Act.

Regarding appellant's allegations of harassment by her coemployees, as previously noted, the Board concurs with the hearing representative's findings in this regard. The Board has long held that for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement, the claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>3</sup> The Board has explained in *Mildred Thomas*,<sup>4</sup> wherein the appellant perceived an unsympathetic atmosphere among her coworkers following her return from leave, that appellant's feeling of dissatisfaction with her coworkers were self-generated and noncompensable. Similarly, in the present case there is no evidence that appellant was harassed. Appellant's perceptions that her coworker's questions about her leave and new duties were not all sympathetic are self-generated perceptions which are not compensable under the Act.

Finally, the Board also finds that the evidence of record does not substantiate that appellant's emotional condition was consequential to her 1987 bilateral tendinitis claim.

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.<sup>5</sup>

In the present case, appellant has not alleged that she sustained a post-traumatic stress disorder or any other emotional condition, which was a natural consequence of her 1987 physical injury. Rather, appellant has alleged that she sustained her emotional condition because of the work she performed upon her return to work in 1991 and due to harassment by coemployees. Appellant's allegations do not substantiate that her emotional condition was a direct and natural consequence of her 1987 injury.

As appellant did not allege a compensable factor of employment, the Office was not required to evaluate the medical evidence of record.

The decision of the Office of Workers' Compensation Programs dated June 27, 1997 is hereby affirmed.

Dated, Washington, D.C.

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<sup>3</sup> See *Mary A. Sisneros*, 46 ECAB 155 (1994).

<sup>4</sup> 42 ECAB 888 (1991).

<sup>5</sup> See *Charlet Garrett Smith*, 47 ECAB 562 (1996).

October 7, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member