

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA STEPHENSON and U.S. POSTAL SERVICE,
NORTH TEXAS MAIL PROCESSING CENTER, Coppell, TX

*Docket No. 98-342; Submitted on the Record;
Issued October 12, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

On February 3, 1997 appellant, then a 42-year-old mailhandler, filed a claim for an occupational disease (Form CA-2) assigned number 16-0294180 alleging that on January 10, 1997 she first realized that her psychological condition was caused or aggravated by her employment.¹ Appellant stated that on or about January 10, 1997, she was approached by Al Green, appellant's supervisor and two employing establishment inspectors. Appellant further stated that after she clocked in, she was taken from the workroom floor and interrogated by the inspector for approximately two hours and that she was denied representation. Thereafter, appellant stated that her manager took her badge and requested that she leave the property and that her supervisor or the union could not give her a reason as to why she was placed off the clock.

¹ The record reveals that appellant has filed several claims prior to her current claim before the Board. On June 1, 1981 appellant filed a traumatic injury claim (Form CA-1) for a back injury sustained on May 30, 1981. On March 18, 1991 appellant filed a Form CA-1 for a stomach injury sustained on March 1991. On May 29, 1991 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability of the March 18, 1991 injury. On October 31, 1991 appellant filed a Form CA-2 assigned number 16-0199460 alleging that she first realized that her carpal tunnel syndrome condition was caused by her employment on October 25, 1991. By letter dated December 31, 1991, the Office of Workers' Compensation Programs accepted appellant's claim for bilateral wrist strain. On January 13, 1995 appellant filed a Form CA-2 alleging that she first realized that her cervical injury was caused by her employment on December 9, 1994. On April 13, 1995 appellant filed a Form CA-1 assigned number 16-0259133 alleging that she sustained a wrist injury while loading tubs of mail.

In an accompanying narrative statement, appellant indicated that she experienced a lack of memory, hair loss, depression, reliving the treatment she received from the employing establishment, fear and anxiety of losing her job, stress in managing a home as a single parent of two children, someone following her everywhere she went, an inability to sleep, management's refusal to tell her why she was losing her job and fear of financial burden. Appellant also reiterated her allegations regarding the interrogation by an employing establishment inspector as provided in her Form CA-2.

By letter dated April 7, 1997, the Office advised the employing establishment to submit factual evidence regarding appellant's allegations and a copy of appellant's position description. In a letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised appellant to submit additional factual and medical evidence supportive of her claim.

In response to the Office's letter, the employing establishment submitted a narrative statement from Gregory Rogers, appellant's supervisor, denying appellant's allegation that she was never told why she was put off the clock and appellant's other allegations. The employing establishment also submitted investigative documents and appellant's employment records.

In response to the Office's letter, appellant submitted an undated narrative statement reiterating her allegations regarding the January 10, 1997 interview, mistreatment by the employing establishment and being required to work outside her physical restrictions. Appellant also alleged that the employing establishment set her apart from the work force. Additionally, appellant submitted medical evidence.

In further response, appellant submitted an undated narrative statement alleging that she was subjected to loud and abusive language and mean-spirited behavior by and from the employing establishment after she returned to light-duty work from a prior approved claim for carpal tunnel release and elbow surgery. Appellant further alleged that the employing establishment made her work in a position that was outside her physical limitations. She also alleged that one of the employing establishment inspector's kept looking at the scar on her arm which really made her upset. Appellant reiterated her allegations that she feared losing her job and that she was harassed about her condition during the interview with the employing establishment inspectors.

In a July 7, 1997 letter to her congressman, appellant reiterated her allegations regarding harassment by the employing establishment due to her condition, being required to perform work outside her physical limitations and stress due to financial burden.

By decision dated September 8, 1997, the Office found the evidence of record insufficient to establish that the claimed injury occurred in the performance of duty. In an accompanying memorandum, the Office found the following constituted noncompensable employment factors: (1) appellant's reaction to being interviewed by two employing establishment inspectors on January 10, 1997 and being placed in an off-duty status without pay for failing to report work performed during periods that she received compensation from the Office; (2) appellant's fear of losing her job; (3) appellant's stress in managing a home as a single parent of two children; (4) appellant's feeling that everywhere she went she was

being followed; and (5) appellant's fear of financial burden. The Office also found that the following were not accepted as factual or having occurred: (1) appellant becoming upset because one of the inspectors was looking at a scar on her arm during the interview; (2) management setting appellant apart from the work force; (3) appellant being nicknamed "Post Office Crip" and that she was openly harassed about her condition; (4) appellant's subjection to loud and abusive language and derogatory and mean-spirited behavior; (5) harassment by management; and (6) unfair representation of the matter regarding appellant's removal.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.²

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of her federal employment.³ 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.⁴

In this case, several of appellant's allegations fall into the category of administrative or personnel actions. The Board has held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.⁵ The Board has held, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Thomas D. McEuen*, 41 ECAB 389 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

with the claimant.⁶ Absent evidence of error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

Appellant's allegations that fall within this category of administrative or personnel matters include appellant's reaction to the employing establishment's investigation regarding her failure to report income she earned while receiving compensation benefits and conflicting statements made in documents she filed with the Office,⁷ appellant's reaction to her termination of employment by the employing establishment as a result of the investigation,⁸ the employing establishment's refusal to allow appellant to see a union representative during an interview with inspectors,⁹ and appellant's filing of a grievance concerning her termination.¹⁰ Further, appellant has failed to establish that the employing establishment committed error or abuse in handling these administrative matters. Regarding the employing establishment's investigation and subsequent termination of appellant, the record reveals that appellant's grievance concerning her termination of employment was denied on April 1, 1997. This decision did not indicate that the employing establishment committed error or abuse in handling either the investigation or termination of appellant. Therefore, appellant has failed to establish a compensable employment factor under the Act.

Appellant's allegation that her fear of termination caused her emotional condition does not constitute a compensable employment factor under the Act. Disabling conditions caused by an employee's fear of termination do not constitute compensable employment factors under the Act. In such cases, the employee's feelings are self-generated and are not related to assigned duties.¹¹

Appellant has alleged that she was harassed by the employing establishment about her condition, during the interview by one of the employing establishment inspectors and being set apart from the work force. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment and discrimination may constitute factors of employment giving rise to coverage under the Act.¹² Mere perceptions alone of harassment are not compensable under the Act.¹³ 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

⁶ *Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

⁸ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁹ *Wanda G. Bailey*, 45 ECAB 835 (1994).

¹⁰ *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

¹¹ *Barbara E. Hamm*, 45 ECAB 843 (1994).

¹² *Donna Faye Cardwell*, *supra* note 4; *Pamela R. Rice*, *supra* note 3.

¹³ *Wanda G. Bailey*, *supra* note 9; *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

reliable evidence.¹⁴ Appellant has failed to provide any such probative and reliable evidence in this case. Appellant did not submit any statements supportive of her allegations. Thus, the Board finds that appellant has not established a compensable employment factor under the Act.

Appellant has further alleged that the employing establishment required her to work outside her medical restrictions. This could constitute a compensable factor of employment, if substantiated by the record.¹⁵ In this case, however, no supporting evidence was submitted. Rather, appellant merely made a general allegation without providing specific details about the duties that she was required to perform by the employing establishment that were not within her physical limitations. Therefore, appellant has failed to establish a compensable employment factor under the Act.

The September 8, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
October 12, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹⁴ *Ruthie M. Evans*, *supra* note 13.

¹⁵ *Diane C. Bernard*, *supra* note 10; *Minnie L. Bryson*, 44 ECAB 713 (1993).