

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. LASTER and U.S. POSTAL SERVICE,
POST OFFICE, Albany, GA

*Docket No. 98-1303; Submitted on the Record;
Issued October 27, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen the record pursuant to section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On April 13, 1995 appellant, then a 35-year-old supervisor of customer service, filed an occupational disease claim, alleging that beginning April 3, 1995 she sustained anxiety reactions and stress due to pressure from a situation involving a coworker which occurred on January 25, 1995. Appellant stopped work on April 4, 1995. In a supplemental statement, appellant indicated that her claimed emotional condition was due to being physically attacked by Michael Brown, Sr., another supervisor, on January 25, 1995 and she alleged discrimination in relation to disciplinary actions, including a reduction in grade and reassignment from a supervisory position, due to actions taken subsequent to the January 25, 1995 incident. Appellant submitted statements in which she identified the following as causative factors of her emotional condition: she was subjected to ineffective managers and did not receive support from upper management; she sustained interference with her basic job function and she made numerous observations, recommendations and comments in which she noted potential problems and suggested changes to improve performance and morale which had not be implemented.

In a decision dated August 21, 1995, the Office denied appellant's claim on the grounds that appellant did not establish that she sustained an emotional condition while in the performance of duty. By decision dated December 3, 1996 and finalized December 6, 1996, an Office hearing representative affirmed the August 21, 1995 decision of the Office. In a merit decision dated April 22, 1997, the Office denied modification of its prior decisions. By decision dated February 24, 1998, the Office refused to reopen appellant's claim for merit review on the grounds that the evidence submitted was insufficient.

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 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 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

In the present case, appellant has not established that she sustained an emotional condition while in the performance of duty. Appellant alleged several incidents which she asserts constituted harassment or discrimination. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant 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 Appellant failed to provide any such probative and reliable evidence in the instant case. Specifically, appellant alleged that she was physically attacked and verbally abused by Mr. Brown on January 25, 1995. However, the employing establishment investigated the incident and based on eyewitness' statements from eight employees, which are included in the record, determined that appellant had not been subjected to verbal abuse or the use of profanity and that Mr. Brown had not intentionally struck her foot while pushing a piece of equipment. The evidence does not substantiate appellant's assertion that she was physically attacked or verbally abused by Mr. Brown, as alleged.

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).

Appellant also contends that she was subjected to discrimination due to disciplinary actions that arose due to incidents that transpired subsequent to and in connection with the January 25, 1995 incident. On February 14, 1995 appellant was notified by Postmaster Ronald Bradley of a proposed reduction and reassignment based on the following incidents: on January 26, 1995 she allowed members of the local police force to engage in an investigation of the January 25, 1995 incident without notifying the postmaster of their presence on the premises in violation of district policy; on January 26, 1995 appellant also conducted an investigation without permission and left her work area unattended for approximately 45 minutes; these actions led to appellant's husband visiting the employing establishment on January 26, 1995 resulting in newspaper articles which did not enhance the image of the employing establishment; and appellant attempted to get a coworker to change his statement concerning the events of January 25, 1995. Mr. Bradley indicated that these actions, viewed in conjunction with an unauthorized purchase by appellant for the employing establishment, cast serious doubt on her ability to act responsibly as a manager for the employing establishment. By letter dated April 7, 1995, appellant was advised that the proposed reduction in grade and pay would become effective April 15, 1995. Appellant's reaction to the disciplinary actions taken by the employing establishment in response to administrative concerns regarding appellant's conduct is not compensable under the Act unless she can establish that the employing establishment erred or acted abusively.⁶ The record is devoid of any evidence to establish error or abuse by the employing establishment with respect to this administrative matter. In addition, appellant's dissatisfaction with Mr. Bradley's supervisory style, *i.e.*, allegations of ineffective management and nonsupport, and his failure to act on observations and recommendations she made is not within the performance of duty. Appellant's complaints concerning the manner in which her supervisor performed his duties as a supervisor or the manner in which he exercised his supervisory discretion fall, as a rule, outside of compensable factors of employment.⁷ Her complaints are analogous to frustration over not being allowed to work in a particular job environment and are therefore not compensable. Consequently, appellant has not identified any compensable factors of employment and has not established that she sustained an emotional condition within the performance of duty.

The Board also finds that the Office properly denied appellant's request for reconsideration dated January 6, 1998.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value

⁶ *Joe E. Hendricks*, 43. ECAB 850 (1992).

⁷ *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

⁸ 20 C.F.R. § 10.138(b)(2).

and does not constitute a basis for reopening a case.⁹ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

On reconsideration appellant submitted a narrative statement in which she expressed her disagreement with the April 22, 1997 decision, a medical report dated January 5, 1998 by Dr. A. Vernon Dixon, a psychiatrist, and three 1997 statements by former coworkers in which they note their previous problems with employing establishment management or current problems with working conditions. Appellant's narrative statement is a reargument of points previously considered and addressed by the Office. While the three statements by former coworkers is new evidence, it is not relevant or pertinent as these statements do not substantiate the previously identified causative factors, including appellant's claims of harassment and discrimination. The employees' expressions of dissatisfaction with management or comments concerning their individual complaints of past treatment by the employing establishment, are not relevant to appellant's identified causative factors, including the incidents of January 25, 1995 and the employing establishment's resultant disciplinary action. Finally, as appellant has not substantiated any compensable factors of employment, the medical evidence is not reviewed and cannot establish a basis for reopening the record. The Office properly denied appellant's request for reconsideration dated January 6, 1998.

The decisions of the Office of Workers' Compensation Programs dated February 24, 1998 and April 22, 1997 are hereby affirmed.

Dated, Washington, D.C.
October 27, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

¹⁰ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).