

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN K. BRUNS and U.S. POSTAL SERVICE,
POST OFFICE, Des Moines, IA

*Docket No. 97-1574; Submitted on the Record;
Issued September 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition causally related to factors of her federal employment.

On April 3, 1996 appellant then a 36-year-old part-time flex clerk, filed an occupational claim alleging that she sustained job stress and situational anxiety due to working for the postmaster, Roger Brownmiller. She stated that the week of March 18 to March 22, 1996 was the culmination of Mr. Brownmiller's deplorable treatment towards her. Appellant stopped working from March 25 to April 6, 1996.

Appellant alleged that she had her first knee accident at work in August 1994 and she has since been harassed and retaliated against. Appellant stated that when she was asked to complete an accident report, Mr. Brownmiller slammed drawers trying to find the form and stated, "here, you fill it out. You ha[d] the accident." She said he told a coemployee that he should be fired from doing their safety talks because they had entirely too many accidents, apparently making reference to her experience. Appellant stated that she had another knee injury in May 1995 and when she brought Mr. Brownmiller her doctor's report and asked him if he would make a copy, he said "What for?" and angrily told her to get a quarter and do it herself. She alleged that when she had a question about the form she was to complete for her injury, he screamed at her stating that her doctor had cleared her to carry mail and it was not a reinjury. There was also a conflict about whether appellant had told Mr. Brownmiller that she was taking an afternoon off on June 26, 1995 as opposed to asking if she could take the day off. She said Mr. Brownmiller was angry at her for not completing an accident report promptly and that he glared at her. Appellant stated that when she cut her finger at work, an incident which Mr. Brownmiller witnessed, she was too intimidated to bring up the matter of filing an accident report. She stated that Mr. Brownmiller regularly talked about an employee's performance in front of other employees, he was authoritarian and dogmatic and showed constant anger, with a red and contorted face, sweating profusely and hands shaking and stalked an employee like an animal going after its prey.

Appellant alleged that Mr. Brownmiller "cut her hours" and on March 22, 1996 assigned her the "triple shift." Appellant believed he was assigning her the triple shift "in retaliation."

She also stated that in one remark, he accused her of doing nothing. Appellant stated that on March 18, 1996 Mr. Brownmiller chided her for not being able to lift a 70-pound box, saying she could not do her job. She also said he was watching her to see how she treated customers. Appellant said she was scared of Mr. Brownmiller and feared for her safety. Appellant stated that the week of March 18 to March 22, 1996 was “hell” for her because of Mr. Brownmiller’s harassment and she was having physiological symptoms of vomiting, not eating, diarrhea, migraine headaches, chest pains and tingling up and down her arms.

By letter dated April 22, 1996, the Office of Workers’ Compensation Programs requested additional information from appellant.

Appellant submitted some medical evidence and stated that several grievances had been filed against management in her office by “the clerk craft,” protesting that the janitor performed clerk work, Mr. Brownmiller was doing additional clerk work since July 1995 when one of the clerks left the office to work elsewhere and Mr. Brownmiller was taking the “hot case” or throwbacks away from the clerks and making the carriers do it. Appellant stated that Mr. Brownmiller’s splitting her shift was “blatant harassment.” On some of appellant’s statements, various coworkers signed their names. Brenda Gast noted that she witnessed Mr. Brownmiller telling appellant to fill out two leave slips.

Mr. Brownmiller submitted a statement in which he denied he harassed appellant. He stated the same group of employees who had complained three years ago were again complaining. He noted that in the past year he discussed appellant’s work performance with her three times, he performed work appellant and her coworkers felt they should do and a dispute over her failing to lift a 40-pound box when her doctor had said she had no restrictions. Mr. Brownmiller stated he had sorted mail because he had been instructed to do so by his superiors and had told appellant that he had. He stated that he once provided her with a new assignment and she had trouble performing it. Mr. Brownmiller denied that appellant was ever in physical danger from him and he stated that all employees were monitored equally and fairly. He stated that working the triple shift was a part of appellant’s job description and he had emphasized it during her job interview. Mr. Brownmiller denied coming up to appellant in anger.

By decision dated May 28, 1996, the Office denied the claim, stating that the evidence of record failed to establish that the claimed medical condition or disability arose from factors of her federal employment.

By letter dated December 17, 1996, appellant requested reconsideration of the Office’s May 28, 1996 decision. She submitted additional evidence addressing coworkers’ problems with Mr. Brownmiller and describing incidents, such as appellant mentioning knee pain to them and her desire to advance herself. Debra K. Slaichert stated that during the week of March 18 through March 22, 1996 Mr. Brownmiller was “aggressive and intimidating toward” appellant, that he came toward her fast, with a red face and anger evident in his body language and did this daily. She stated that appellant was under severe stress, was withdrawn and often stated how scared she was for her physical safety due to Mr. Brownmiller’s aggressions. Daniel L. Ballard stated there had been discussions between appellant and Mr. Brownmiller involving conflict with scheduled hours.

By decision dated January 9, 1997, the Office denied modification of its May 28, 1996 decision.

The Board finds that appellant has failed to establish that she sustained an emotional condition causally related to factors of her federal employment.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors 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.²

Regarding appellant's allegations of harassment, the Board has stated that the actions of an employee's supervisor or coworkers which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.³ However, to support a claim based on harassment, there must be some evidence that the harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.⁴

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁵ The issue is not whether the claimant has established harassment or discrimination under standards applied the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁶ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁷

In the present case, appellant has failed to establish a factual basis for her allegations as she has not presented sufficient evidence corroborating the incidents she describes. Appellant alleged that Mr. Brownmiller frequently approached her in a hostile manner, manifested by his red face and fast stride during the third week of March 1996. Mr. Brownmiller denied he

¹ *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

² *Michael Ewanichak*, 48 ECAB ____ (Docket No. 95-451, issued February 26, 1977); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Michael Ewanichak*, *supra* note 2; *Frederick D. Richardson*, 45 ECAB 454, 463 (1994).

⁴ *Michael Ewanichak*, *supra* note 2; *June A. Mesarick*, 41 ECAB 898, 908 (1990).

⁵ *Michael Ewanichak*, *supra* note 2; *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁶ See *Martha L. Cook*, 47 ECAB 226 (1995).

⁷ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

approached appellant hostilely, stating his face became red if he was irritated or worked hard. While several coworkers stated Mr. Brownmiller approached appellant with hostility or demonstrated an intimidating manner, was red in the face with anger “evident in his body language;” no specifics were provided as to the time of the day or the specific nature of the interaction between appellant and Mr. Brownmiller.

Appellant also alleged that she was harassed over scheduling conflicts, specifically that she was assigned triple shifts. Scheduling hours is a part of the administrative function of the employing establishment and as such only constitutes a compensable factor if management abused its discretion. Appellant has not made a showing that Mr. Brownmiller abused his discretion in assigning her to a triple shift. Mr. Brownmiller stated that triple shifts were a part of appellant’s job description. In the grievance settlement, it was agreed that Mr. Brownmiller would not assign appellant triple shifts during the week. The outcome of the grievance, although in appellant’s favor, does not establish that Mr. Brownmiller abused his discretion in originally assigning appellant the triple shift.

Appellant alleged that Mr. Brownmiller yelled at her when she asked him to lift a 70-pound box for her. Mr. Brownmiller stated that his understanding was appellant had no restrictions according to her doctor and he had asked her why she was unable to lift a 40-pound box. There is insufficient evidence to corroborate that Mr. Brownmiller treated appellant unreasonably in this regard.

Other instances appellant alleges constituted factors of employment were also not corroborated by specific evidence. Appellant did not establish that her safety was endangered by Mr. Brownmiller’s presence.⁸ Her allegation that Mr. Brownmiller was abusive in handling her workers’ compensation claim and a medical report is not corroborated by the evidence. The processing of a workers’ compensation claim is an administrative function and as such is not compensable unless management acted abusively.⁹ Further, problems over leave slips are administrative functions of the employing establishment and appellant did not establish that management acted unreasonably in this regard.¹⁰

Appellant’s allegation that Mr. Brownmiller would not teach her something new or promote her does not establish harassment as job advancement is an administrative function and appellant has not shown that Mr. Brownmiller acted abusively.¹¹ Although the grievance settlements establish management should not perform certain jobs, the distribution of work is an administrative function and since Mr. Brownmiller stated that his supervisors told him to perform the work, appellant has not established error.¹² The alleged disputes between appellant and Mr. Brownmiller over the completion of leave slips do not constitute compensable factors of employment because they are within the administrative function of the employing establishment

⁸ See *Mary S. Sisneros*, 46 ECAB 155, 161-62 (1994).

⁹ See *Joseph G. Cutrufello*, 46 ECAB 285, 294 (1994).

¹⁰ See *Sharon K. Watkins*, 45 ECAB 290, 297 (1994); *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

¹¹ See *Martha L. Watson*, 46 ECAB 407, 418 (1995).

¹² See *Anne L. Livermore*, 46 ECAB 425, 435 (1995).

and appellant has not shown that management abused its discretion in this regard.¹³ Appellant's allegation that she was excessively monitored and glared or stared at also does not constitute a compensable factor of employment as monitoring an employee also falls within the administrative function of the employing establishment and appellant has not shown management abused its discretion in this regard.¹⁴ Mr. Brownmiller asserted that all employees were equally monitored.

Inasmuch as appellant has not established that there were any compensable factors of employment or that management acted unreasonably toward her, she has failed to establish that she sustained an emotional condition related to factors of federal employment. Since no compensable factors of employment have been established, it is not necessary to address the medical evidence.¹⁵

The decisions of the Office of Workers' Compensation Programs dated January 9, 1997 and May 28, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 3, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹³ See *Leroy Thomas*, 46 ECAB 946, 951 (1995); *Daryl Davis*, 45 ECAB 907, 911.

¹⁴ *Id.* at 911.

¹⁵ *Diane C. Bernard*, *supra* note 10.