

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE JONES and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

*Docket No. 98-163; Submitted on the Record;
Issued September 23, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant filed a claim on February 26, 1995 alleging that she had developed job stress. The Office of Workers' Compensation Programs denied appellant's claim by decision dated August 3, 1995. She requested an oral hearing on November 28, 1995. The Branch of Hearings and Review denied this request as untimely on December 29, 1995. Appellant requested reconsideration on August 2, 1996. By decision dated September 24, 1997, the Office denied modification of its prior decision.

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.¹

The Office did not consider any of appellant's allegations prior to December 1990 as these allegations were considered in appellant's prior emotional condition claim.

Appellant attributed her emotional condition to statements and actions by coworkers. A coworker informed appellant that one of the managers did not like her fingernails. A coworker,

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

Karen, throws tantrums and speaks gruffly to appellant. Appellant believes that this is the underlying cause of her stuttering. She stated that a carrier yelled at her and that Kathy Roberts, the station manager, yelled at her, chided her and threw tantrums. Ms. Roberts responded on July 1, 1997 and stated that she did not recall acting as appellant's supervisor, nor yelling and chiding her. Appellant alleged that the postmaster was rude and unprofessional in a meeting with her. In a statement dated June 24, 1997, the postmaster responded and stated that he did not treat appellant rudely or unprofessionally. Appellant alleged that a supervisor, Debbie Orton, began to screen her calls to harass her. She stated that her drawer was \$600.00 short. Appellant alleged that Ms. Orton made false statements regarding her telephone usage and departure time.

For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.² Appellant has not submitted evidence substantiating that the above-mentioned events occurred and that these events constituted harassment.

Appellant also alleged that for several years she was harassed by coworkers, Tom Stuart and Karen Waldon. This harassment consisted of scathing remarks and criticism. In a statement dated June 28, 1997, appellant's previous supervisor, David C. Wall, stated that appellant was not harassed. However, he stated that appellant's coworkers occasionally expressed resentment to her verbally. Mr. Wall stated that this was addressed and ended.

In this case, appellant has alleged harassment and Mr. Wall's statement indicates that coworkers verbally harassed her. The Board finds that this statement is sufficient to establish that appellant was harassed as alleged.

Appellant also attributed her emotional condition to overwork and the inability to carry out the duties of her various positions. In January 1995 appellant began work as a timekeeper. Appellant alleged that her present position of timekeeper was stressful due to the responsibilities of the position. She alleged that the reports that she produced were used to justify positions. Appellant stated that the amount of work she was required to do on Sundays was stressful. She alleged that the complex system for distributing overtime hours at the general mail facility caused her stress. Appellant also attributed her condition to assigning carriers to cover vacancies.

Appellant also worked as a pool relief window clerk. She alleged that she had to work the first hour of her shift alone, that she was not familiar with the meter machines and that customers yelled at her. Appellant stated that during November 1994 her relief clerk was replaced by another worker who was not familiar with the job requirements. Mr. Watkins, a coworker, was injured during this period and appellant was required to perform lifting for him.

² *Alice M. Washington*, 46 ECAB 382 (1994).

Appellant accepted a position in May 1994 working at the security station. She also stated that she was assigned additional job duties.

Appellant's previous supervisor, Mr. Wall stated that appellant had extreme difficulty in performing the duties of her position. In a statement dated June 25, 1997, Janet Orr, a supervisor, stated that appellant lacked the ability to retain instructions and that basic duties did not register. She stated that she recommended that appellant be taken out of the program. Ms. Orton stated that appellant was required to work overtime even though she was not on the overtime desired list. On April 27, 1995 Jay L. Jung, appellant's current supervisor, stated that appellant's attendance was irregular. He stated that appellant was required to work overtime. He stated that appellant's position involved deadlines including daily and weekly reports. Mr. Jung stated that accuracy and timeliness were requirements of appellant's position. He stated that appellant appeared to be able to perform the duties of her position.

The statements from appellant's supervisors indicate that appellant was required to work overtime and that she had difficulty with the duties of her various positions. As appellant attributed her emotional condition to her regular or specially assigned duties, she has established a factor of employment.

Appellant attributed her emotional condition to inadequate training. She stated that she did not receive adequate training to operate the system for distributing overtime hours at the general mail facility. Appellant stated that as she worked in three locations, the station managers were not in contact regarding the amount of training that she had undergone. She stated that Ms. Waldon trained her as a timekeeper. She alleged that Ms. Orr did not adequately train her. Appellant stated that she had to perform computer work for which she was not trained.

Ms. Orr stated that she attempted to train appellant and that she did correct appellant. Mr. Jung stated that appellant proceeded through training as expected.

Training is considered an administrative function.³ As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁴ Appellant has submitted no evidence in support of her allegations that the employing establishment committed error or abuse in the type or amount of training she received.

Appellant alleged in October 1994 Ms. Orr fired her and gave her an unfair and inaccurate evaluation. Her allegation that a former supervisor gave her an inappropriate

³ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 564 (1995).

⁴ *Martha L. Watson*, 46 ECAB 407 (1995).

performance appraisal relates to administrative or personnel matters, unrelated to her regular or specially assigned work duties and does not fall within the coverage of the Act.⁵

Appellant attributed her emotional condition to the denial of a promotion. Denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve an employee's ability to perform his or her regular or specially assigned work duties, but rather constitute an employee's desire to work in a different position.⁶

Appellant described an incident in December 1994 in which she requested additional workers and Ms. Orton instructed her to speak to her supervisor. She stated that a hearing impaired customer wished to speak with Ms. Orton on that date and that Ms. Orton refused. Appellant stated that after she reported the refusal to the customer, Ms. Orton verbally attacked her, screaming and pointing her finger at appellant. Appellant responded and instructed Ms. Orton not to stick and shake her finger. Ms. Orton stated on April 28, 1995 that on December 1, 1994 she had a confrontation with appellant. She stated that appellant asked her to speak to a deaf customer and that Ms. Orton instructed appellant to discuss the matter with Rod Lippert. Ms. Orton stated that appellant "yelled" to the customer that the station manager would not speak to her and that the customer would have to leave. Ms. Orton reprimanded appellant and appellant requested sick leave.

On July 10, 1997 Ms. Orton stated that she was not appellant's supervisor, but that appellant insisted on help. Ms. Orton stated that in regards to the hearing impaired customer, she was unaware of the problem and instructed appellant to speak to her supervisor. She stated that she instructed appellant that it was unacceptable to make a scene at the window.

The Board has recognized the compensability of verbal and physical altercations or abuse in certain circumstances. However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁷ Appellant has not corroborated her allegations that Ms. Orton yelled or pointed her finger at appellant by submitting witness statements. Therefore, appellant has not established that this discussion constituted a compensable factor of employment.

As appellant has established factors of employment including harassment by coworkers and difficulty in carrying out her regularly and specially assigned duties, the Board must consider the medical evidence in support of appellant's claim for an emotional condition.

In a report dated January 12, 1995, Dr. Adrienne Kania, an osteopath, noted on December 1, 1994, that appellant had a dispute with her supervisor that upset her such that she could not work. She diagnosed work stress. As this incident has not been accepted as a compensable factor of employment, any condition resulting therefrom is not an employment injury.

⁵ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

⁶ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

⁷ *Harriet J. Landry*, *supra* note 5.

Dr. Scott H. McClure, a Board-certified psychiatrist, completed a report on May 10, 1995 noting that appellant felt stress from a highly critical coworker. He diagnosed panic disorder without agoraphobia. Dr. McClure did not provide sufficient detail in relating the employment factors to which appellant attributed her condition to determine whether he was addressing compensable or noncompensable factors. Therefore, this report is not sufficient to meet appellant's burden of proof.

On August 29, 1996 Dr. McClure attributed appellant's condition to work stressors including angry or critical statements from coworkers and supervisors. Again Dr. McClure did not provide sufficient factual detail in his report to determine whether he believes that appellant's emotional condition was due to the accepted factors of employment.

Appellant submitted additional reports from a mental health therapist⁸ and a social worker. As these professionals are not considered physicians for the purposes of the Act, their reports do not constitute medical evidence and are insufficient to meet appellant's burden of proof.

As appellant has failed to submit the necessary medical evidence to establish a causal relationship between the accepted factors of employment and her diagnosed emotional condition, she has failed to meet her burden of proof.

The decision of the Office of Workers' Compensation Programs dated September 24, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 23, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁸ *Bradford L. Sutherland*, 33 ECAB 1568 (1982).