

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET L. WINES and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 99-1054; Oral Argument Held December 8, 1999;
Issued April 4, 2000*

Appearances: *Robert D. Ahlstrom, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty on September 14, 1996.

On September 23, 1996 appellant, then 48-year-old distribution and window clerk filed a claim alleging that she sustained an emotional condition due to the actions of her supervisor, Bill Daily, on September 14, 1996. Appellant stated, "[Mr.] Daily ordered me to leave my job in an extremely threatening manner. This was the culmination of months of verbal abuse and intimidation of [Mr.] Daily and coworkers under his direct supervision and control."

In a statement dated November 25, 1996, appellant indicated that on September 14, 1996, a coworker, Carol Simmons, told her to correct some mail and became "very hostile" when she asked what was wrong with the mail. Appellant indicated that Ms. Simmons had directed "profane and hostile" language to her in the past with the knowledge and acquiescence of Mr. Daily. She indicated that Ms. Simmons yelled at her and used vulgar language when she suggested that Ms. Simmons correct the mail. Appellant indicated that several minutes later, Mr. Daily approached her and demanded to know if she "had a problem," that she responded, "No, I don't have a problem," and Mr. Daily then asked in a loud voice, "Janet, do you have a problem?" Appellant stated:

"He stated that I was not wanted there and that I was not going to work at that office anymore. I turned to face him, and it was then that Mr. Daily put his thumbs under the belt portion of his trousers and began pulling his trousers up in a very threatening fashion as he approached me even closer. His face was flushed. As he approached me, pulling up his trousers, he stated in a very loud

voice: ‘You don’t know who you’re messing with!’ He came up within an inch of my face and yelled: ‘Get out, and get out now!’”

Appellant indicated that she was terrified by Mr. Daily’s conduct and was afraid that he would physically harm her. She stated that she was so traumatized that she could not remember most of the ride home.

In a statement dated October 3, 1996, appellant detailed other incidents and conditions at work, which she believed caused her to sustain an emotional condition. Appellant alleged that on February 12, 1996, Mr. Daily told her in the presence of a coworker that she was sent to the Highland office because he was “great for getting rid of people like me,” that he would not recommend her for any supervisory position and that he would “fight” any Equal Employment Opportunity complaint she filed. Appellant claimed that the coworker then used profane language to say that she wanted her fired and that Mr. Daily stated that she should begin looking for a job elsewhere. She asserted that in August 1996 Mr. Daily wrongfully accused her of a burglary, which occurred at the office in her absence, told her she was under investigation and refused to return items which were held by the investigators. Appellant asserted that in September 1996 Mr. Daily unfairly criticized her regarding selling stamps to relatives and customer complaints of misplaced mail; she noted that a coworker used profane language during a discussion about selling stamps to relatives. Appellant stated that on September 14, 1996 she asked Mr. Daily not to criticize her on the work floor, but that he responded that the office was small and she could not expect privacy. She also provided an account of the claimed September 14, 1996 incident, which was similar to that contained in her November 25, 1996 statement.¹

By decision dated March 4, 1997, the Office denied appellant’s emotional condition claim on the grounds that she did not establish any compensable employment factors. By decision dated and finalized June 8, 1998, an Office hearing representative denied modification of the Office’s March 4, 1997 decision. By decision dated December 3, 1998, the Office denied modification of its earlier decisions.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty on September 14, 1996.

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.² On the other hand, the disability is not covered where it results from such factors as an

¹ Appellant also submitted medical evidence in support of her claim, including reports of Dr. Ludicke, an attending Board-certified psychiatrist.

² 5 U.S.C. §§ 8101-8193.

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.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that a supervisor, Mr. Daily and coworkers, including Ms. Simmons, subjected her to harassment and discrimination. Appellant alleged that on September 14, 1996 Mr. Daily subjected her to profane and abusive language, ordered her from the workplace in an unprofessional manner, unfairly threatened to fire her and aggressively approached her in a physically intimidating manner. Appellant also indicated that Ms. Simmons subjected her to profane and abusive language on that date. She claimed that on other occasions Mr. Daily and other coworkers directed abusive language at her and threatened her regarding a variety of matters. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

However, for harassment or discrimination to give rise to a compensable disability under the 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.⁹

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹⁰ Appellant alleged that supervisors and coworkers made statements and engaged in actions, which she believed constituted harassment and discrimination, but she provided insufficient corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹¹ During a hearing held before an Office hearing representative on April 2, 1998, appellant's husband and a friend of appellant testified that they observed appellant in an extremely distressed state upon arriving home on September 14, 1996; they indicated that appellant reported being "thrown off the property" at work and harassed by her supervisor. However, as they did not actually witness the events at work on September 14, 1996, their testimony would be of limited probative value with respect to this matter. The record also contains statements, in which Laura Spicknall, a coworker of appellant, alleged that Mr. Daily acted abusively towards her. However, these statements are of no probative value in the present case in that they relate to Ms. Spicknall, rather than appellant, and Ms. Spicknall did not witness any of the incidents and conditions alleged by appellant. Thus, appellant has not established a compensable employment factor under the Act with respect to the alleged harassment and discrimination.

Regarding appellant's allegations that the employing establishment unfairly criticized her regarding matters such as misdirected mail and selling stamps to relatives, mishandled various aspects on an investigation of a burglary and unreasonably monitored her activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹² Although the handling of disciplinary actions, the management of investigations and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹³ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence). Both Mr. Daily and Ms. Simmons submitted statements which refuted that they made the comments or engaged in the actions attributed to them by appellant. Mr. Daily indicated that on September 14, 1996 he asked appellant whether she had a problem, that appellant responded in the affirmative, and that he then advised appellant that he could arrange for her transfer to another work site if she was unhappy. He asserted that his conversation with appellant on that date was not confrontational or abusive.

¹¹ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹² See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹³ *Id.*

the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁴ Appellant did not, however, submit any evidence to show that the employing establishment committed error or abuse with regard to such administrative matters. Thus, appellant has not established a compensable employment factor under the Act with respect to these matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁵

The decision of the Office of Workers' Compensation Programs dated June 8, 1998 is affirmed.

Dated, Washington, D.C.
April 4, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹⁴ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).