U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATTY L. RUST and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, TX

Docket No. 99-873; Submitted on the Record;
Issued August 15, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue 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 19, 1998 appellant, then a 43-year-old mail clerk, filed an occupational disease claim, alleging that as a result of coworker and management harassment, manipulation by others, disappointment in the expectation of her supervisors and management, she developed stress. She stopped work on March 5, 1998. In a supplemental statement, appellant indicated that the causes of her job stress were the work hours, intense pressure to get her job completed, harassment, office politics, and conflicts with coworkers and supervisors to carry out their job responsibilities. She asserted that she was not included in office gatherings and was ignored and hassled by her coworkers; her coworkers created a hostile environment; her continual complaints to the supervisors about her coworker's were ignored and she was told to just ignore them and do her job; the supervisor related appellant's complaints to her coworkers; management did not care about work ethic and she was the only one doing her job; she was discriminated against because she was a disabled employee; and her pleas to be reassigned went unheeded by the personnel office. Appellant advised that she was the only white person working in her section. She related an incident on March 2, 1998 when she left work following a discussion regarding a weight loss contest among the coworkers in her section and was charged leave without pay (LWOP).

In a May 5, 1998 report, Dr. Mark S. Mlcak, a family practitioner, stated that appellant presented to his office on March 6, 1998 with a history of being very suicidal and depressed. He noted that appellant has problems at work due to harassment by coworkers. Dr. Mlcak noted that appellant has reported this harassment many times to supervisors who have not been willing to pursue the complaints. He asserted that appellant has gotten so upset by this that she has been unable to face the fellow workers. Dr. Mlcak opined that appellant's medication would not be effective is she is placed back in the same working conditions.

In a June 25, 1998 letter, the employing establishment stated that appellant was able to and did perform the required duties of the modified job, but noted that she had an attendance problem at times. The station manager, Steve Adler, related that appellant had never mentioned that she was suicidal and depressed until just prior to her leaving. He noted that appellant had requested an interest in working in a different job assignment or location and that he would see what he could do to accommodate her. Mr. Adler stated that it was during this conversation that he first heard of appellant's problems with her coworkers. He noted that appellant had worked with these same employees for a number of years and, after talking with appellant's coworkers, he could not verify harassment or wrongdoing to cause appellant's reaction. Mr. Adler further noted that appellant had never reported such harassment to her supervisor or to any of the other supervisors at this station.

Joyce E. White, a supervisor, wrote that on March 2, 1998 appellant explained to her that she had a disagreement with Kim Edwards, a coworker, about a "weight contest" and was very upset and crying. Ms. White related that she had asked appellant whether she wanted her to intervene on her behalf and talk with Ms. Edwards and any other employees involved about their behavior and appellant refused. Ms. White stated that she offered appellant the chance to go home early and appellant again refused. Ms. White decided to observe directly what was happening in appellant's section and noted that the employees working there were "picking on" appellant. She instructed the clerks to come to her office and informed them that any form of harassment towards appellant would not be tolerated. Ms. White noted that, later in the day, she went back to appellant's unit to make sure everything was fine and appellant was not at her work station. Since the timekeeper did not have a Form 3971 requesting the type of leave to be used, Ms. White charged an estimated LWOP. When appellant called the following day, she asked appellant what type of leave she wanted and appellant stated that she did not care. On appellant's next scheduled day, March 5, 1998, she was again charged with LWOP as a 3971 form was not filled out and appellant had left the station. Ms. White stated that she was unaware of appellant's stressful condition and that appellant had never stated that her requests for time off were due to stress and/or job related.

Sara Archer, another supervisor, also denied any form of discrimination or harassment towards appellant and stated she was unaware of appellant's alleged stressors. She noted that appellant had voiced concerns about the work habits of her coworkers and felt that she worked harder than them. During those conversations, Ms. Archer related that she had offered to move appellant from that position, but appellant had refused. Ms. Archer further related that there was never a time where appellant was discouraged from giving her opinions or comments.

In a decision dated July 7, 1998, 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 September 2, 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. She alleged several incidents which she asserts constituted harassment or discrimination by her coworkers which created a hostile environment for her to work in. 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. Her supervisors and the station manager all denied that any harassment or discrimination occurred. Appellant's supervisor described being approached by appellant concerning a weight contest over which appellant did not think it was fair for her to compete with more overweight people because they could lose weight faster. The Board finds that the evidence is not sufficient to establishment harassment of appellant by her coworkers. The employing establishment followed proper procedures by investigating the situation. There is no evidence that the employing establishment either erred or acted abusively in the administration of a personnel matter. Thus, the evidence does not substantiate appellants

[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 (1994); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[5] *Ruthie M. Evans*, 41 ECAB 416 (1990).

assertion that she was harassed or discriminated against by her coworkers concerning the March 2, 1998 incident. Furthermore, as there is no evidence to support appellant's other allegations concerning her difficult relationship with her immediate coworkers, the Office properly found that appellant has not submitted the necessary factual evidence to establish that her allegations are compensable under the Act.

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 a stress-related or emotional condition in the performance of duty.[6]

The Board also finds that the Office properly denied appellant's request for reconsideration dated July 7, 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.[7] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[9]

On reconsideration appellant submitted a narrative statement in which she expressed her disagreement with the July 7, 1998 decision. Her narrative statement is a reargument of points previously considered and addressed by the Office. Only duplicative evidence was submitted. Thus, the Office properly denied appellant's request for reconsideration dated April 14, 1998.

[6] 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).

[7] 20 C.F.R. § 10.138(b)(2).

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

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

The decisions of the Office of Workers' Compensation Programs dated September 2 and July 7, 1998 are hereby affirmed.

Dated, Washington, DC
August 15, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member