

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA F. DAVIS and U.S. POSTAL SERVICE, SOUTHERN
MARYLAND GENERAL MAIL FACILITY, Capitol Heights, MD

*Docket No. 98-1365; Submitted on the Record;
Issued February 7, 2000*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On April 26, 1997 appellant, then a 28-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she developed "anxiety depression" on April 19, 1997, while working. Specifically, she alleged:

"On 4-18-97 I wrote a statement reporting Tony Black for putting a noose in Arthur Wallace[']s section. Mr. Black laughed and made racial remarks about Mr. Wallace being a white boy nigga and the fact that he had hung the noose in his section. After submitting my statement the following day April 19th I was informed by my superior that he knew I wrote a letter and so did they but he need[ed] us to work together to get out the mail and to locate him if something went wrong because he had to cover the front and back end. I stayed at work until 6:30 AM that morning. Mr. Hebron and Mr. Black left before I did. On Monday April 21st I noticed my tire was flat. I in turn went to Texaco Gas Station where the attendant pulled out a nail over 2 inches long from the side of my tire."

In support of her claim, appellant filed an accident report attachment dated April 26, 1997 written by appellant's supervisor, wherein he noted: that on April 19, 1997 appellant wrote a statement about an incident that involved two employees; that on April 20, 1997 while appellant was working she alleged that she overheard some loud, rude comments two of the employees were making about her and the report she made; that appellant alleged that she sustained "this type of abuse" throughout the day; that appellant relayed that the next morning she had a flat tire and discovered that there was a long nail stuck in the side of the tire; that appellant alleged that this deeply disturbed her, that she "almost bumped into" one of the aforementioned employees upon her return to work; and that this "upset her to the point that she just left work promptly." Appellant's supervisor continued that on the next day, April 23, 1997, appellant stated that she had been to her doctor, that she was suffering from anxiety and

depression and that her doctor recommended that she not work through May 6, 1997, at which time she would be seen for further evaluation.

Appellant also submitted three "Verification of Treatment" forms dated April 24, May 6 and 23, 1997 and signed by physicians of Kaiser Permanente, wherein they noted that appellant had been ill and was unable to work from April 22 through at least May 23, 1997 and that she "can return to work when safe environment free from the intimidation to which she has been subjected has been put in place."

By letter dated June 26, 1997, the Office of Workers' Compensation Programs requested appellant to submit specific factual evidence and medical evidence with regard to her claim as the submitted evidence was insufficient. The employing establishment was also provided an opportunity to address appellant's allegations. Appellant was allowed 30 days within which to submit the requested information, but did not respond within the time allotted.

In a decision dated July 12, 1997, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish that her condition was caused by an employment factor.

By letter dated August 1, 1997, appellant requested a written review of the record.

Appellant submitted with this request a medical report dated May 23, 1997 by Dr. Daniel O'Connell, a Board-certified psychiatrist, who found that appellant suffered from an adjustment disorder with mixed emotional features as a result of an occupational problem. In the patient history, Dr. Daniel related that appellant had no prior mental health problems until events at the workplace created "a climate of fear," that since the incident with her tire, appellant has "experienced fearfulness, increased vigilance, anger and depression." Appellant also noted that she was alarmed "that a threat to her safety represents a threat to her child who is completely dependent on her."

By decision dated January 12, 1998, an Office hearing representative denied appellant's claim, finding that appellant had not established that she sustained an injury in the performance of duty. The hearing representative noted that it was not clear to what appellant attributed her medical condition, that appellant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence and that appellant "has presented no evidence showing that the alleged events actually occurred, or explained how they resulted in a medical illness." The hearing representative pointed out that as appellant failed to substantiate a compensable factor of employment, it was unnecessary for her to address the medical evidence.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,¹ the Board

¹ 28 ECAB 125 (1976).

discussed at length the principles applicable to alleged employment-related emotional conditions and the distinctions as to the type of employment situation giving rise to an emotional condition which will be covered by the Federal Employees' Compensation Act.² When an employee experiences an emotional reaction to his or her regular or specifically assigned employment duties or to a requirement imposed by the employment or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the coverage of the Act. On the other hand where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the employee's regular or specially assigned work duties or requirements of employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the coverage of the Act.³ However, where the evidence demonstrates 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 self-generated by the employee but is caused by the employing establishment.⁴

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors 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.⁵ In the present case, appellant must thus initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleges instances of error or abuse in this case, but perceptions and feelings alone are not compensable. To establish entitlement to benefits, appellant must establish a factual basis for her claim by supporting the allegations with probative and reliable evidence.⁶

Appellant has submitted no evidence to substantiate error or abuse on the part of the employing establishment. The history of this incident began when appellant made a report about her coworkers putting a noose over the desk of another coworker. Appellant does not allege that this incident caused her emotional condition or that the incident was directed at her. Furthermore, this did not arise out of appellant's regular or specially assigned duties and there is no evidence of error or abuse on the part of the employing establishment in their investigation of this matter. Appellant also attributed her emotional reaction to comments on the part of her coworkers. Verbal altercations or abuse in the workplace may constitute a compensable factor

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, *supra* note 1.

⁴ *David G. Joseph*, 47 ECAB 490, 496 (1996)

⁵ *See Margaret S. Kryzycki*, 43 ECAB 496, 502 (1992).

⁶ *Abe E. Scott*, 45 ECAB 164, 171 (1993).

of employment.⁷ Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, appellant must establish a factual basis for her claim by supporting her allegations of verbal abuse with probative and reliable evidence.⁸ However, appellant has not provided sufficient detail of the specific conversations she allegedly overheard nor explained how the content of the conversation relate to or was otherwise directed at her. Appellant failed to submit evidence to substantiate her allegations. For these reasons, appellant has failed to establish any compensable factor of employment based on her allegations of verbal abuse. Appellant also alleged that her emotional condition was caused by the incident of the nail in her tire. However, there is no evidence that this was work related and appellant has submitted no evidence that would factually establish how the nail got into appellant's tire. Accordingly, appellant has not established her allegations pertaining to incidents alleged between April 18 and 21, 1997 to which she attributed her emotional condition. Appellant failed to present corroborating evidence sufficient to establish that her emotional condition arose from compensable factors of employment and accordingly, has failed to meet her burden of proof. The decisions of the Office will, therefore, be affirmed.

The decisions of the Office of Workers' Compensation Programs dated January 12, 1998 and July 12, 1997 are hereby affirmed.

Dated, Washington, D.C.
February 7, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Mary A. Sisneros*, 46 ECAB 155 (1994); *Marie Boylan*, 45 ECAB 338 (1994); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990)