

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA J. PORCH and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 98-1948; Submitted on the Record;
Issued February 14, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On November 25, 1996 appellant, then a 41-year-old postal clerk, filed a claim alleging that she developed stress-related anxiety due to actions of her supervisors while in the performance of her employment duties. Appellant alleged that in December 1995 she became ill from graves disease, requiring that she take many days off from work. She also took days off from work in order to care for her daughter. She stated that her supervisors harassed her on several occasions regarding her use of leave and specifically did not inform her of the provisions of the Family Medical Leave Act. Appellant alleged that this harassment culminated in her receiving a letter of warning on February 28, 1996 and suspensions on June 28, 1996 and January 17, 1997, for irregular attendance. She alleged that she unfairly received a January 10, 1997 suspension for failure to follow instructions and a June 1, 1997 letter of warning for an unauthorized absence from her work area. Appellant added that she felt she had been denied a promotion as a result of these disciplinary actions against her. She further stated that, on July 3, 1997, her supervisor informed her that, as a result of the June 1, 1997 letter of warning, appellant would be placed on a six-month probation. Appellant stated that she became so upset by this probation notice that she left work early that day and stopped at a fast food restaurant on her way home, where she suffered a miscarriage. She alleged that stress, due to the suspensions, the letters of warning, the denied promotion and the probation caused her miscarriage, which in turn triggered depression and an anxiety disorder. Appellant was off work intermittently until October 2, 1997, when she stopped work completely. She returned to work December 24, 1997, at which time she became emotionally unstable, was diagnosed as a danger to others by a physician at the employing establishment health unit and was subsequently admitted to a psychiatric hospital. In support of her claim, appellant submitted medical evidence from her treating physicians, Drs. Vipal K. Arora and Maleeha Ahsan, as well as treatment notes from Cheryl Long, a licensed clinical social worker.

The employing establishment controverted appellant's claim in a letter dated December 9, 1997, contending that the administrative actions taken against appellant were within reason and, therefore, appellant's emotional stress was not sustained in the performance of duty. The employing establishment submitted a November 5, 1997 statement from William Pouncy, appellant's Leave Control Supervisor, in which he stated that, at no time did appellant make management aware that she had a serious illness and that, although she was advised on several occasions of the provisions of the Family Medical Leave Act, she failed to provide timely and sufficient documentation to support coverage of her claim. Mr. Pouncy further stated that not all of appellant's absences were for sickness or illness in her family, but that she was also absent due to car trouble and bad weather. The employing establishment submitted a statement from Jane E. Brown, appellant's supervisor, who noted that the June 1, 1997 letter of warning was warranted as appellant spent approximately 45 minutes on the telephone dealing with a personal matter, in the employee break room away from her assigned work area, during a time when she was supposed to be on duty. Ms. Brown stated that appellant did not mention to her supervisor that day that she had a personal problem she needed time to correct and that if she had, arrangements could have been made.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated March 19, 1998, on the grounds that appellant had not established that she sustained an emotional condition in the performance of her federal employment.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the 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 Federal Employees' Compensation Act.³ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁴

It is well established that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. A claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁵ The Board has underscored that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable 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 The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings, alone, are not compensable. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.⁷

The Board finds that the administrative and personnel actions taken by management in this case, contained no evidence of agency error and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.⁸

In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the alleged personnel matters on the part of the employing establishment. These include the letters of warning, and notices of suspension and probation made by her supervisors, both written and oral, regarding her irregular attendance, her failure to follow instructions and her unauthorized absence from her work area, as well as the denial of coverage under the Family Medical Leave Act for certain claimed absences. None of these episodes constitute a compensable factor of employment. Disciplinary matters consisting of discussions or letters of warning are actions taken in an administrative capacity and without evidence of error or abuse, are not compensable as factors of employment.⁹ In addition, the Board has held matters involving the use of sick leave, and rules and procedures relating thereto, are also administrative and personnel matters that are not related to an employee's regular or

⁴ *Id.*

⁵ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *Norma L. Blank*, 43 ECAB 384 (1992).

⁷ *Id.*

⁸ *Alfred Arts*, 45 ECAB 530 (1994).

⁹ *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

specially assigned work duties or requirements.¹⁰ In this case, the employing establishment submitted statements explaining its actions and appellant has provided no evidence establishing that these actions were in error or were abusive.

Accordingly, appellant has failed to establish a factual basis for her allegations that her claimed emotional condition was caused by factors of her employment.

The decision of the Office of Workers' Compensation Programs dated March 19, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 14, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).