U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KYLES McNELL and U.S. POSTAL SERVICE, DALLAS PROCESSING & DISTRIBUTION CENTER, Dallas, TX

Docket No. 98-887; Submitted on the Record;
Issued January 18, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition in the performance of duty.

On April 21, 1996 appellant, then a 55-year-old postal clerk, stated that she was assaulted by a supervisor on February 29, 1996 who had previously threatened to remove her from the employing establishment and had harassed her. Appellant contended that the alleged assault and harassment had caused considerable stress.[1] In a November 26, 1997 decision, the Office denied appellant's claim on the grounds that the evidence failed to demonstrate that appellant sustained an injury as alleged.

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

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 Federal Employees' Compensation Act. 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 Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his 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 the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning

[1] Appellant also filed a claim for physical injuries from the alleged February 29, 1996 assault. In a June 14, 1996 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that fact of injury was not established. The decision was affirmed in a May 29, 1997 decision of an Office hearing representative.

of the Act.[2] 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.[3] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his 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.[4]

Appellant's claim initially discussed the February 29, 1996 incident in which a supervisor, James Sharper, allegedly pulled mail out of her hand. In a May 7, 1997 statement, V.L. Austin, a supervisor, stated that appellant's description of the February 29, 1996 incident was untrue according to statements from witnesses. Mr. Austin denied that appellant had been harassed by anyone at the employing establishment, either by coworkers or management. He stated that most of the time other employees stayed away from appellant. Mr. Austin indicated that appellant usually worked at a letter case away from other employees when possible.

Mr. Austin submitted statements from Mr. Sharper and a witness to the February 29, 1996 incident. Mr. Sharper stated that at approximately 7:30 p.m. he was pulling the mail for Hutchins, Texas from all cases to finish filling the tray. He indicated that as he was pulling the mail from appellant, she tried to take the mail away from him and knocked some of it on to the floor. He denied that he took mail from appellant's hand. A.D. Jermany stated he saw Mr. Sharper collecting the mail for Hutchins, Texas from the cases. He related that when Mr. Sharper reached for the mail at appellant's case, she also reached for it, knocking some of it to the floor. Mr. Jermany indicated that appellant collected the mail that had fallen and placed it under some mail she had yet to sort and subsequently laughed about what she had done.

In a June 30, 1997 statement, appellant stated that, when she was at a case working the mail, Mr. Sharper, stated loudly that he was going to remove appellant from the employing establishment and that, with all the people he knew, it should not be a problem. She indicated that a coworker, Natherine Hampton, publicly concurred in the statement, commenting that everybody wanted appellant out of the employing establishment. Appellant related that, in the February 29, 1996 incident, Mr. Sharper came up from behind her at 7:15 p.m. on her right side and reached around to her left side and pulled the mail for Hutchins, Texas. Appellant placed her hand on the mail because her supervisor had allowed her to pull the wickets on the case where she was working. Appellant claimed that Mr. Sharper jerked the mail from her hand, stating that he was taking the mail and that he would call the postal inspectors on appellant. Appellant stated that Mr. Sharper and Mr. Jermany were laughing after Mr. Sharper had pulled the mail and Mr. Jermany stated that he would have done the same thing. She contended that the

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

[4] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

mail did not have to be dispatched until 9:30 p.m. She indicated that when she came to work on March 1, 1996, Mr. Sharper continued to speak loudly to her. The evidence submitted by appellant's supervisors and eyewitnesses to the incident provided a more credible description of this incident than appellant's unsupported, uncorroborated description of the incident. This evidence shows that the incident was not an intentional incident to harass appellant. Appellant's supervisor was performing a supervisory function. There is no evidence of error or abuse by the supervisor in this incident.

Appellant alleged other incidents, which she considered were stressful. She stated that in September 1990 a black rag doll with pins stuck in it was placed under the case where she worked daily. She related that on August 22, 1990 a supervisor called her into his office and asked if she had stated that Ms. Hampton had placed a curse on her. Appellant replied that the statement was nonsense and expressed resentment at having her work interrupted. She alleged that on May 23, 1993, a coworker, Frontrell McLemore, came to her case to pull a wicket. Appellant indicated that after Mr. McLemore pulled the wicket, she struck appellant in the chest three times. When the incident was investigated, Ms. McLemore wrote a statement indicating that she was in fear of her life because of appellant's presence and believed that appellant would repeat an incident that had occurred in Tennessee. Appellant stated that after this statement, her coworkers and supervisors started to watch and stare at her. She claimed that she had been threatened by coworkers. Appellant indicated that on June 24, 1994, Sarah Vaughan told appellant that a person like appellant could come up missing. She stated that the statement made her fear for her safety. Appellant documented the incident in a memorandum to the postal inspectors but reported that nothing was ever done. She denied that she had ever done anything to provoke such a statement. Appellant indicated that Ester Moore accused her of playing tricks on people, stated that appellant was not going to get away with this and commented that she was going to do something about it. She stated that when Ms. Moore reported to work at 7:00 p.m., she began yelling at appellant. Appellant reported the incident and a supervisor met with both of them but did nothing. Appellant has not submitted any corroborative evidence or statements from witnesses to show that these incidents occurred as she alleged. The incidents, therefore, cannot be accepted as having occurred.

Appellant stated that in September 1994, Eddie Sewer, a coworker, approached her and began to talk to appellant with his face approximately two inches from her face. Appellant indicated that Mr. Sewer approached her on two subsequent occasions, once approximately two weeks after the first incident and the second on October 19, 1994. She noted that on the first occasion Mr. Sewer indicated that he was concerned about appellant and wanted to be her friend. On October 19, 1994 he again approached to closely to her face. She reported the incident and, when nothing was done, documented the incident with the union. Appellant noted that a meeting was called in which, Mr. Sewer apologized. Appellant subsequently was informed that her name had been referred to the Employee Assistance Program on the same day that Mr. Sewer first approached her. She stated there were witnesses and written documentation submitted to management on these incidents. Appellant noted that she had filed grievances and an equal employment opportunity complaint concerning the harassment she had received from Mr. Sharper. Appellant made a general allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor, which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.

However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[5] Appellant has not established that factual basis in this case. She has not shown that the actions of her supervisor constituted harassment or would be considered error or abuse. She also has not established that these incidents were related to her assigned duties. Appellant, therefore, did not established that this series of incidents constituted a compensable factor of her employment.

The decision of the Office of Workers' Compensation Programs dated November 26, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 18, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[5] *Joan Juanita Greene*, 41 ECAB 760 (1990).