

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA T. TESTA and U.S. POSTAL SERVICE,
POST OFFICE, Scranton, PA

*Docket No. 98-1098; Submitted on the Record;
Issued January 10, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

The Board has given careful consideration to the issue involved, the entire case record and appellant's contentions on appeal. The Board finds that the decision of the Office of Workers' Compensation Programs' hearing representative dated March 28, 1997 is in accordance with the law and the facts in this case and hereby adopts the findings and conclusions of the hearing representative.¹

On August 1, 1997 appellant, through her representative, requested reconsideration of the March 28, 1997 decision. In support of her request appellant submitted several lengthy statements detailing her many health problems, perceptions of harassment, grievances, letters of warning, suspensions, and suspensions of driving privileges, and she claimed that the Veterans Administration Hospital was threatening to rehospitalize her. Copies of appellant's grievances, grievance denials, grievance results, letters of warning and suspension actions, corrective/remedial actions, and Merit Systems Protection Board actions were also submitted.

¹ Although the hearing representative does not analyze individually and in detail each and every one of the multiple allegations of harassment and mistreatment appellant made, he does correctly apply the principles of the Federal Employees' Compensation Act and the applicable case law, when he determines that appellant submitted no supporting or corroborating factual evidence whatsoever for any of the alleged incidents of harassment or mistreatment. Without witness statements, upheld grievances or other supporting or corroborating evidence, and considering the employing establishment's denial that any harassment or mistreatment occurred, appellant's allegations are unsupported, and she has therefore failed to establish any compensable factors of employment. Further, the hearing representative properly noted that appellant had a preexisting psychiatric history which included a 10 percent psychiatric disability award from the military, multiple suicide attempts, an involuntary hospitalization and commitment, threats of gun violence against the employing establishment and to the U.S. Attorney's Office, an arrest and a fight with the police, and multiple suspensions for cause, and that none of the medical evidence of record causally related appellant's multiple emotional problems to her employment.

An undated, unsigned witness statement was also submitted which merely stated that the author had witnessed appellant's "harassment" as far back as 1987, but no specific incidents were identified as to time, place or person involved.² In a May 23, 1997 statement, the union president stated that he sincerely felt that appellant was singled out by postal management and unduly harassed, but he failed to identify any specific incident, time or place. A statement alleging that appellant started out all right but went downhill until she was fired, was given by Ronald L. Gaughan, a coworker, but no incidents of harassment or mistreatment were identified. Mr. Gaughan thought it awful that the employing establishment did not help appellant as she psychologically deteriorated.

Medical treatment notes from physicians, physician assistants and nurses were submitted which merely reported appellant's condition and medications. No medical rationale relating appellant's psychiatric problems to specific factors of her employment was provided.

A psychiatric evaluation as to fitness for duty was submitted by Dr. Matthew Berger, a Board-certified psychiatrist, which noted that appellant felt "picked on," discussed her present symptoms, opined that she had a mild paranoid flavor to her thought process and was quite angry with the employing establishment for their perceived persecution of her, and diagnosed recurrent major depression and a mixed personality disorder. Supporting psychological test results were also submitted. Neither discussed causation of appellant's emotional condition.

By decision dated November 20, 1997, which affirmed the March 28, 1997 decision finding that appellant had failed to establish and implicate any compensable factors of her employment in the causation of her condition. The Office found that the denied grievances and lessened or modified disciplinary actions failed to establish any administrative error or abuse, and that no findings had been made that any charges against her were without merit. The Office found that the only grievance which was sustained locally was appellant's 1991 grievance about overtime not being handled equitably, but noted that appellant was paid the requested overtime, and that none of the medical evidence of record implicated this overtime inequity as the cause of her condition for which she filed her claim in 1995. The Office noted that mere perceptions of harassment were not compensable, and that appellant had not established, by witnesses or by other factual corroborating evidence, that any of the alleged incidents actually occurred as alleged. The Office found that the letters appellant submitted which had been written on her behalf were of no probative value as they were not eyewitness accounts of instances of harassment or mistreatment, and that she had submitted no evidence to support her claim of sexual harassment by a supervisor or to establish that any alleged harassment occurred. The Office found that the evidence submitted was insufficient to establish that appellant's emotional condition arose from compensable factors of her employment.

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

² On October 2, 1995, however, appellant was found to be guilty of harassment in the Magisterial Court for Lackawanna County and was sentenced to 90 days in jail and a fine, with the jail sentence suspended and the fine reduced.

To establish appellant's claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁴

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations 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 to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. 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 of the Act.⁵ 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.⁶ 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.⁷

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell* *supra* note 3.

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁷ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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 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.⁸ 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 factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁹ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹⁰

Appellant alleged general harassment and mistreatment on the part of her supervisors and other personnel at the employing establishment. With regard to her allegations of harassment, it is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.¹¹ An employee's charges that he or she was harassed or discriminated against are not determinative of whether or not harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹² Words and actions that appellant implicated as being harassment must be confirmed by supporting evidence that they did, in fact, occur as alleged. However, in this case such corroboration was not forthcoming from appellant. Thus, appellant has not established a compensable employment factor under the Act in this respect. Further, lacking such corroboration that the circumstances of any of the alleged harassment and mistreatment, she has not established evidence of administrative error or abuse.

Appellant also alleged that she was harassed and mistreated by the disciplinary actions taken against her by the employing establishment. The Board has frequently explained that disciplinary matters concerning reprimands, discussions, letters of warning, suspensions and the like pertain to actions taken in an administrative capacity. Although administrative and personnel matters are generally related to the employment, they are functions of the employer and not duties of the employee.¹³ However, an administrative or personnel matter will be considered to be a compensable employment factor where the evidence discloses error or abuse

⁸ See *Barbara Bush*, 38 ECAB 710 (1987).

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹¹ *Helen Casillas*, 46 ECAB 1044 (1995); *Ruth C. Borden*, 43 ECAB 146 (1991).

¹² See *Anthony A. Zarcone*, 44 ECAB 751 (1993).

¹³ *Gregory N. Waite*, 46 ECAB 662 (1995); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

on the part of the employing establishment. Notwithstanding, the mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.¹⁴ In this case, appellant has not submitted any evidence that the employing establishment erred or acted abusively with regard to any of these disciplinary actions from 1985 to 1995.

Appellant further alleged sexual harassment by a supervisor. However, no corroborating evidence was submitted and the supervisor involved vehemently denied appellant's allegations that any such event occurred. Therefore, sexual harassment has not been demonstrated.

Appellant further filed multiple grievances, virtually all of which were either denied or resolved with settlement agreements without any finding that the employing establishment acted improperly. The only grievance that was upheld was a 1991 grievance about the inequitable assigning of overtime, which was resolved with appellant receiving pay for the denied overtime. As this grievance was upheld, the circumstances could be considered a compensable factor of appellant's employment and the Board must look to the medical evidence to establish causal relation. However, none of the medical evidence discusses the causation of appellant's condition in detail and nowhere is there any indication that appellant's 1995 condition was due, even in part, to the 1991 denial of requested overtime. Accordingly, the record does not support that appellant sustained an emotional condition causally related to this factor of her employment.

As appellant failed to implicate any compensable factors of employment in the causation of her emotional condition except for the denial of requested overtime, and as the medical evidence of record does not support in any way that appellant's 1995 diagnosed emotional condition was caused or aggravated by this 1991 denial of overtime, she has failed to meet her burden of proof to establish her claim.

¹⁴ *Mary L. Brooks*, 46 ECAB 266 (1994).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 20 and March 28, 1997 are hereby affirmed.

Dated, Washington, D.C.
January 10, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member