

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBBIE MOORE and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 98-1191; Submitted on the Record;
Issued July 10, 2000*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On August 17, 1995 appellant, then a 31-year-old distribution clerk, filed a claim for an occupational disease (Form CA-2) alleging that she first realized that her conditions which included major depression, panic disorders, hypertension, migraine headaches and dermatologic disorder were caused or aggravated by her employment on July 30, 1995. She stated that she worked in a negative environment created by management. Appellant's claim was accompanied by factual and medical evidence.

By letter dated October 2, 1995, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised her to submit additional factual and medical evidence supportive of her claim. Appellant did not respond.

By decision dated October 23, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty. In a letter dated November 9, 1995, she requested an oral hearing before an Office representative.

In a December 5, 1996 decision, the hearing representative affirmed the Office's decision. On October 9, 1997 appellant requested reconsideration of the Office's decision accompanied by factual evidence.

By decision dated January 7, 1998, the Office denied appellant's request for modification based on a merit review of the claim.

Workers' compensation law does not apply 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 coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) 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

In the present case, appellant has primarily attributed her emotional condition to her reaction to matters involving administrative or personnel actions of the employing establishment. An employee's emotional reaction to an administrative or personnel matter is not generally covered under the Act. Thus, an emotional reaction to matters pertaining to leave are not generally covered under the Act without error or abuse on the part of the employing establishment.⁴ Likewise, an employee's complaint concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.⁵

In an August 13, 1995 narrative statement, appellant alleged that her emotional condition was caused by the receipt of a letter of warning regarding her attendance in May 1995 and four letters of demand from the employing establishment. She also alleged that her emotional condition was caused by the employing establishment's denial on three occasions of her request for a schedule change regarding her days off and work hours. In addition, appellant has alleged that the employing establishment denied her request for light-duty work. She filed grievances regarding the above actions taken by the employing establishment.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

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

⁴ *Daryl R. Davis*, 45 ECAB 907 (1994).

⁵ *Abe E. Scott*, 45 ECAB 164 (1993).

In support of appellant's allegations regarding the employing establishment's issuance of letters of warning and demand and denial of leave, she submitted a narrative statement from her husband and coworker, A. Wade Moore. She also submitted narrative statements from other coworkers who either were informed about her panic attacks or witnessed them. In an August 14, 1994 statement, Mr. Moore indicated that appellant's emotional condition was due to her receipt of letters of warning and demand and that he witnessed four of appellant's panic attacks.

The employing establishment's issuance of the letters of warning and demand is an administrative or personnel action of the employing establishment.⁶ In an October 22, 1996 statement responding to appellant's allegation, Aubrey J. Watson, Jr., manager of the employing establishment's distribution operations, noted that it was the employing establishment's policy to issue a letter of warning for poor attendance and that was the reason why such a letter was issued to appellant. Although the employing establishment's letter of demand was rescinded by letter dated September 19, 1995 as a result of appellant filing a grievance, the decision does not reveal that the employing establishment committed error or abuse in issuing the letter of demand. Because appellant has failed to establish that the employing establishment committed error or abuse in handling this administrative matter, she has not established a compensable employment factor under the Act.

Appellant's desire for a different work schedule results from her desire to work within a particular environment and from her frustration over changes within the work environment. This frustration is not compensable.⁷ In response to appellant's allegation concerning this matter, Mr. Watson provided instances where employees request a change in their schedule, which did not apply to appellant and the basis for approval of these requests, which depended on the employees' work area and operational needs of the employing establishment. He stated that he met with appellant and Mr. Moore, who worked in appellant's unit, about her request and advised them that it would be easier for Mr. Moore to change his schedule based on operational needs. Mr. Watson further stated that he advised appellant that management had agreed to change her husband's days off whereby they would have the same days off, but that appellant had to report to work on Monday (Sunday night) based on operational needs. He then noted that Mr. Moore refused to change his days off. Mr. Watson further noted that management was willing to accommodate appellant's need to be driven to and from work by her husband in giving Mr. Moore the same days off as appellant, again noting that Mr. Moore refused to change his schedule. Appellant has failed to show that the employing establishment committed error or abuse in handling this matter; therefore, she has not established a compensable employment factor under the Act.

Further, the employing establishment's denial of appellant's request for light-duty work relates to appellant's desire to hold a particular assignment and does not relate to actual work duties assigned.⁸ Mr. Watson stated that requests for light-duty work were reviewed and

⁶ *Diane C. Bernard*, 45 ECAB 223 (1993).

⁷ *See Donald E. Ewals*, 45 ECAB 111 (1993); *David W. Shirey*, 42 ECAB 783 (1991).

⁸ *Elizabeth W. Ensil*, 46 ECAB 606 (1995); *James W. Griffin*, 45 ECAB 774 (1994).

approved based on the restrictions and in accordance with the provisions of Article 13 of the collective bargaining agreement between the employing establishment and the union. He explained that appellant was denied light-duty work because the restriction did not fall under the guidelines of temporary light duty, there was no medical evidence that indicated appellant was unable to perform all or part of her bid assignment and this action was in accordance with the above article. Inasmuch as appellant has failed to demonstrate error or abuse by the employing establishment in handling her request for light-duty work, she has failed to establish a compensable employment factor under the Act.

The employing establishment's demand for supporting documentation of requested leave is a matter of supervisory discretion. Mr. Watson stated that it was the employing establishment's policy to request medical documentation from employees who were absent in excess of three consecutive days. He noted that appellant missed a lot of time from work and thus, medical documentation was necessary. The Board finds that appellant has failed to establish that the employing establishment committed error or abuse in handling this administrative matter. Therefore, appellant has failed to establish a compensable employment factor under the Act.

Appellant's filing of grievances regarding the employing establishment's handling of the above matters involve personnel or administrative matters.⁹ As noted above, there is no evidence establishing that the employing establishment committed error or abuse in handling any of these matters. Thus, appellant has failed to establish a compensable factor of employment.

Appellant has alleged that she was harassed by Mr. Watson, J.R. Park and J. Lombard, employing establishment managers and others from the employing establishment. Specifically, appellant contended that she was required to perform mandatory duties, that Mr. Watson divulged confidential information regarding the cause of a seizure-like reaction she experienced while working at the employing establishment and that she was being watched by Mr. Watson. Appellant stated that Mr. Watson would have the supervisor run edits of her work. She also stated that whenever she asked Mr. Watson a question, he would walk out of the room. Further, appellant stated that when she spoke with Mr. Park, she felt as if she were telling a joke because everything was funny to him. Appellant contended that she was sexually harassed by Mr. Lombard. She also contended that the employing establishment discriminated against her in denying her various requests while granting the requests of her coworkers. However, in an emotional condition claim, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that the alleged acts of harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁰

Concerning appellant's allegation that she was harassed in being required to perform mandatory duties, she has failed to submit any corroborative evidence. A claimant must

⁹ *Diane C. Bernard, supra* note 6.

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

establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.¹¹

In support of her allegation that Mr. Watson divulged confidential information about her, appellant submitted an August 17, 1994 memorandum from Mr. Park to all the supervisors in his department advising them to refrain from divulging confidential information given to them by their workers. In his October 22, 1996 response to appellant's allegation, Mr. Watson denied divulging any confidential information about appellant's medical condition. Notwithstanding the August 17, 1994 memorandum, appellant has failed to establish harassment because the memorandum does not indicate that confidential information about appellant was divulged and Mr. Watson denied the allegation.

Concerning appellant's allegation that she was being watched by management, it is an administrative function to supervise employees and see that they are tending to their tasks during work hours.¹² In support of her allegation, appellant submitted witness statements from her coworkers, indicating that she was watched by the employing establishment. In response to this allegation, Mr. Watson stated that appellant was watched for an extended period of time until her removal from the employing establishment concerning timekeeping procedures since being alerted that appellant was clocking in for an employee who was absent from work and who did the same for appellant when she was absent from work. He further provided that there was a need to build a case for the inspection service. Mr. Watson stated that appellant admitted to the charges and was reprimanded. He also stated that appellant's credibility was diminished and thus, it became necessary to monitor her work. Mr. Watson then stated that appellant's work was not monitored any more than the other employees' work and that appellant was not harassed at any time. Although appellant submitted statements indicating that she was watched by the employing establishment, they do not establish error or abuse by the employing establishment in handling this matter. Therefore, appellant has failed to establish a compensable employment factor.

In response to appellant's allegation that her work was unfairly edited by the employing establishment, Mr. Watson stated that it was standard procedure to run edits on randomly selected employees. He further stated that no employee was edited nightly and that appellant was not singled out to be edited nightly. Mr. Watson then noted appellant's good performance at work and stated that it was seldomly necessary to run edits on appellant's work and to stand by and watch her work as she alleged. He also noted that appellant received a special achievement award for her outstanding work. Appellant has failed to provide sufficient evidence to establish that she was harassed by the employing establishment.

Further, appellant has failed to establish a factual basis for her allegation that Mr. Watson walked out of the room while she asked him a question, that Mr. Park did not treat her conversation with him seriously, that she was sexually harassed by Mr. Lombard and that she

¹¹ *Joan Juanita Greene*, 41 ECAB 760 (1990).

¹² *Id.*

was discriminated against by the employing establishment.¹³ Appellant has not provided the specific information necessary to determine whether the incidents of harassment and discrimination to which she attributed her emotional condition occurred as alleged and constituted compensable factors of employment.

Appellant has alleged that the employing establishment did not comply with the restriction of no overtime work and that she was not permitted to work overtime based on her physician's orders. In support of this allegation, she submitted documents indicating the dates that she was assigned to work overtime. Mr. Watson stated that management did comply with the restriction of no overtime. The Board has held that overwork may be a compensable factor of employment.¹⁴ Although appellant submitted documents indicating that she was scheduled to work overtime, there is no evidence in the record establishing that appellant actually worked overtime. Therefore, the evidence in this case is insufficient to establish that appellant was in fact overworked.¹⁵

Appellant has not provided the specific information necessary to determine whether the incidents of employment to which she attributed her emotional condition occurred as alleged and constituted compensable factors of employment. She, therefore, has not established that she sustained an emotional condition in the performance of duty. In view of this decision, it is unnecessary to consider the medical evidence to determine whether appellant's emotional condition was causally related to compensable factors of her employment. Such factors must be identified and established before it can be determined, through medical evidence, whether a claimant's disability is causally related to such factors.

¹³ *Id.*

¹⁴ *Sandra F. Powell*, 45 ECAB 877 (1994); *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹⁵ *Frank A. McDowell*, 44 ECAB 522, 526 (1993).

The January 7, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member