U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL J. VAN METER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Columbus, OH

Docket No. 99-103; Submitted on the Record;
Issued July 19, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On November 16, 1996 appellant, then a 42-year-old distribution operations-automatic supervisor, filed a notice of occupational disease alleging that her migraine headaches, anxiety, panic attacks, reflux disease, chronic heartburn and stomach and digestive disorders were due to work deadlines, noise factors and lighting in the unit. She stopped work on November 6, 1996.

In an attached statement appellant alleged that she was overworked, subjected to verbal abuse and not shown any respect at the employing establishment. On May 8, 1996 appellant indicated she first realized that her reflux disease, which caused her heartburn, was due to her "job stress and working on pins and needles and anxiety or panic attacks on the job over an extended period of time." She also noted that her emotional problems began after the employing establishment began downsizing. Appellant also alleged that she was harassed, threatened humiliated and abused on the workroom floor. In support of this allegation, she indicated that she had "never been accepted by most of my peers, let alone supervisors and have taken a lot of abuse and mistreatment from the first time she entered this building." Appellant alleged that Judy Darling, a Manager of Distribution Operations (MDO), gave her a stack of books to use to familiarize her with work, but no work time to read them and she could not take them home to read as she was due to her work status at the time. She indicated that she had stress from trying to learn certain job duties and in trying to keep adequate personnel assigned to various work tasks that required coverage. Appellant alleged that Larry Tipton, her manager, told her that she "was n[o]t worth the salary" she was paid and that in general she was treated in a very disrespectful manner by her managers and fellow supervisors. She also alleged that fellow supervisors, "love shoving it down my throat whenever they [a]re in this higher level position." Appellant also alleged that there did not appear to be a "game plan" and the managers failed to listen to supervisors' concerns regarding work problems. Next, she alleged that she had wanted Friday and Saturday nights off, but this schedule was not available and that her requests for

different days off were denied. Appellant further alleged that evaluations were unfair as it was "hard to get anything better than a good rating."

Appellant submitted various disability slips from Drs. Teresa E. Quinlin, an attending Board-certified family practitioner, Glenn Tovar Dias, an attending internist, Anthony Reichley, an attending Board-certified family practitioner, requesting that she be excused from work in November 1996 due to either a test being performed, hospitalization or illness.

In a report dated December 6, 1996, Dr. John D. Jones, a chiropractor, diagnosed cervicocranial syndrome, migraine headaches and cervical segmental dysfunction and opined that appellant's job was "the primary aggravation of her condition."

In an undated letter faxed on January 13, 1997, Mr. Tipton, acting MDO, denied that appellant was treated in a disrespectful manner by either himself or other employees. Mr. Tipton also denied that appellant was harassed and that managers were willing to discuss problems with supervisors and provide advice.

In an undated statement received by the Office of Worker's Compensation Programs on January 15, 1997, Mr. Tipton denied appellant's allegations that she had been harassed or mistreated by her fellow supervisors and managers. Furthermore, he noted that the employing establishment made accommodations to reduce appellant's stress which included softer lighting, additional staff in the cutting areas, increased staffing in automation, advanced the run time to allow more processing times and created new standard operating procedures. Mr. Tipton also denied appellant's allegation that he told her or anyone else that they were not worth the salary they were paid.

In a January 20, 1997 report, Dr. Dias indicated that appellant had a history of chronic migraines and depression. The physician noted that appellant "claimed that she was under a lot of stress at work at that time and that most of her headaches were precipitated at work," that she was bothered by the lights and machine noises, and the "stress she experienced from her supervisors." Dr. Dias stated that appellant related that she was harassed at work by her supervisors and that there were no other stressors in her life except for work. The physician diagnosed depression, anxiety disorder with panic attacks, post-traumatic stress disorder and migraine headaches. In concluding, Dr. Dias opined that appellant was depressed and required extensive counseling and that he hoped that appellant would improve so that she could return to work.

In a statement dated February 14, 1997, James Hostetler, a senior MDO, denied appellant's allegations that she had been harassed or mistreated by her fellow supervisors and managers. Mr. Hostetler also indicated that appellant had been offered the opportunity of being detailed outside of her work station on several occasions and that she had not mentioned her problems with noise and lights in the work environment prior to filing her claim. He noted that appellant's role as a supervisor placed her in a position "to direct people and make daily adjustments to our operating plans (due to changes in mail volume, people and equipment)." Mr. Hostetler further noted that, as with other supervisors, appellant was "responsible for ensuring" that operations supervised for her met "all operational cutoff times and transportation dispatches"

In a February 20, 1997 report, Dr. Darell J. Smith, a Board-certified psychiatrist, indicated that appellant had a history of depression for approximately eight years and that she had been doing well until conflicts at work. Appellant related that she could not return to her usual job as she found the job duties very stressful. Dr. Smith opined that appellant was incapable of "returning to unrestricted full-time employment."

By decision dated June 27, 1997, the Office denied appellant's claim on the basis that fact of injury had not been established. In the attached memorandum, the Office found the evidence of record insufficient to establish a compensable work factor since her allegations of harassment and discrimination were unsubstantiated.

In a letter dated July 10, 1997, appellant's counsel requested a hearing before an office hearing representative which was held on May 6, 1998.

By decision dated August 28, 1998, the Office hearing representative affirmed the Office's June 27, 1997 decision on the grounds that the evidence of record failed to establish that appellant had sustained an emotional condition in the performance of her federal duties.

The Board finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] 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.[2]

Appellant alleged that she was harassed and mistreated by her supervisor and coworkers. Actions of an employee's supervisor or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable factor of disability under the Act. However, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur.[3] Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement, the claimant must establish a factual basis for the claim by supporting his

[1] *Dinna M. Ramirez*, 48 ECAB 308 (1997); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[2] *Michael Ewanichak*, 48 ECAB 364 (1997); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Helen P. Allen*, 47 ECAB 141 (1995).

or her allegations with probative and reliable evidence.[4] Appellant has alleged that her manager, Mr. Tipton told her that she "was n[o]t worth the salary" she was paid, that she was treated in a disrespectful manner by her fellow supervisors and managers, she was not included in the decision making although she was held accountable for problems resulting from the decisions. Mr. Tipton denied telling appellant she "was n[o]t worth the salary" as well as denying that she was mistreated by any of her fellow supervisors. The Board notes that other than appellant's statements, there is no corroborating evidence that this statement was in fact made. Furthermore, the record contains no evidence to support appellant's allegations that she was treated in a disrespectful manner by her fellow supervisor, that she was not included in the decision making or that she was held accountable for mistakes made due to those decisions. The Board has held that to establish harassment based upon comments made by a supervisor, appellant must establish that the comment was actually made, and that the comment, or any other action by the employing establishment was a form of harassment.[5] In this case, appellant has not established that the specific statement was in fact made and that it was intended to harass appellant. Furthermore, appellant has not submitted any evidence to corroborate her allegation that she was mistreated by her fellow supervisors or managers. As appellant has not submitted any corroborating evidence that she was harassed by her managers, appellant has not established her allegation of harassment by her managers or by her fellow supervisors.

Regarding appellant's allegations of verbal abuse, the Board has held that verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable factor of employment.[6] Although verbal abuse may be compensable in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[7] In this case, there is insufficient evidence to corroborate that appellant was subjected to verbal abuse by her supervisors.

Other incidents implicated by appellant pertained to administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act.[8] But error or abuse by the employing establishment in what would otherwise be a personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.[9] Appellant alleged that her requests to have Friday and Saturday nights off as part of her schedule and other request for leave were denied, which she considered further evidence of the harassment and disrespect she was shown at the employing establishment. The Board has held that actions of the employing establishment in matters involving the use of leave are generally not considered

[4] *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

[5] *Isabol Apostol*, 44 ECAB 901 (1993).

[6] *Janet D. Yates*, 49 ECAB ___ (Docket No. 95-2859, issued December 19, 1997).

[7] *Christophe Jolicoeur*, 49 ECAB ___ (Docket No. 96-597, issued June 11, 1998).

[8] *E.g. Norman A. Harris*, 42 ECAB 923 (1991).

[9] *Thomas D. McEuen*, *supra* note 1.

factors of employment because they related to administrative or personnel matters.[10] Although appellant has made allegations that the employment establishment erred and acted abusively in these administrative and personnel matters, the evidence of record does not establish that these actions were in error or were abusive or unreasonable in nature. The Board has held that where the evidence demonstrates that the employing establishment has neither erred nor acted abusively, coverage under the Act will not be afforded.[11] Also, the Board has held that an assignment of work and performance ratings are administrative or personnel matters of the employing establishment and not a duty of the employee, and, absent evidence to support a finding of error or abuse by the employing establishment, is not compensable.[12] As appellant failed to present evidence of error or abuse, these allegations are consequently not compensable factors of employment.

Likewise appellant's general allegations regarding her inability to wear earplugs or sunglasses as well as the employing establishment's downsizing relate to her fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[13] These matters are not considered to be compensable employment factors.

Appellant also alleged stress from performing her regular duties such as managing her staff to ensure that necessary employing establishment functions were covered and meeting routing deadlines. Mr. Hostetler confirmed that these were supervisory duties of appellant. The Board has held that emotional reactions to situations, in which an employee is trying to meet his or her position requirements, when supported by sufficient evidence, are compensable.[14] Furthermore, where a claimant implicates work load as an employment factor, it is not necessary for purposes of compensability for the claimant to establish that he or she has a greater work load than others.[15] The Board finds that appellant's allegations regarding her supervisory duties are compensable employment factors.

However, a claimant's burden of proof is not discharged by the fact that he or she has established an employment factor that may give rise to a compensable disability under the Act. To establish an occupational disease claim for an emotional condition, a claimant must also submit rationalized medical evidence establishing that he or she has an emotional condition and that such condition is causally related to the accepted work factors.[16]

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[10] *See Martha L. Watson*, 46 ECAB 407 (1995); *Abe E. Scott*, 45 ECAB 164 (1993).

[11] *Michael Thomas Plante*, 44 ECAB 510 (1993); *Effie O. Morris*, 44 ECAB 470 (1993).

[12] *See Ernest J. Malagrida*, 51 ECAB ___ (Docket No. 98-238, issued January 19, 2000); *Janet D. Yates*, 49 ECAB ___ (Docket No. 95-2859, issued December 19, 1997).

[13] *See Michael Ewanichak*, 48 ECAB 364 (1997); *Lillian Cutler*, *supra* note 2.

[14] *Richard H. Ruth*, 49 ECAB ___ (Docket No. 96-1099, issued May 4, 1998).

[15] *Id.*

[16] *Ronald C. Hand*, 49 ECAB ___ (Docket No. 95-1909, issued October 1, 1997); *Mary J. Ruddy*, 49 ECAB ___ (Docket No. 96-2043, issued June 5, 1998).

The Board finds that the medical evidence is insufficient to establish that appellant has an emotional condition causally related to her accepted work factors. The medical evidence submitted by appellant does not specifically attribute her emotional condition to specific employment duties. For example, Dr. Dias and Dr. Smith noted appellant's history but neither physician provided a specific opinion regarding whether specific compensable employment factors caused or aggravated her condition. Furthermore, while Dr. Jones, a chiropractor, provided some support for causal relationship between appellant's neck pain and employment, his report is of no probative value as he did not diagnose a spinal subluxation based on x-ray. Section 8101(2) of the Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.[17]

For these reasons, appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs hearing representative dated August 28, 1998 is hereby affirmed as modified.

Dated, Washington, D.C.
July 19, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[17] 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).