U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAIRENE J. STONEKING and DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY, Des Moines, IA

Docket No. 99-209; Submitted on the Record;
Issued July 11, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen the record pursuant to section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On September 22, 1997 appellant, then a 35-year-old program assistant, filed an occupational disease claim, alleging that in 1992 she had a supervisor who harassed her, played mind games, and treated her differently than anyone else. She stated that she had major depressive disorder with bipolar affect and vasospastic migraine headaches. Appellant further stated that she had been hospitalized since November 22, 1996.

In supplemental statements of August 4 and December 19, 1997, appellant indicated the events which she alleged contributed to or brought about her condition. She asserted that, beginning in 1992, she was faced with the beginning of unfair treatment/harassment by her supervisor, John Bartenhagen. Appellant related that her house burned down in January 1992 and that her insurance status was negatively talked about by a coworker and her supervisor. She asserted that Mr. Bartenhagen had made comments about taking advantage of insurance, but would never explain what he was insinuating. Appellant asserted that she was not allowed to set up her own files, while other staff members could. She further related that when she was not in the office due to her compressed work schedule, Mr. Bartenhagen would move her files around, would not switch the drawer label, and would not tell her that he moved the files. Appellant stated that she never confronted him about that behavior. She asserted that, while in front of producers, Mr. Bartenhagen would either ignore appellant's questions or respond to her questions in a rude tone or sarcastic reply which was embarrassing. Appellant asserted that as Mr. Bartenhagen continued with the childish acts, she began doubting and questioning her knowledge and ability of work, even though she displayed small percentages of errors in her program areas. She also asserted that Mr. Bartenhagen told her that she had to personally call him when she was ill and would not be at work, while no one else had to follow that procedure.

Appellant stated that she rarely took breaks and related one situation in which she was reprimanded and nothing was said to the other staff members. She asserted that Mr. Bartenhagen "knit-picked" her letters and made her redo them, while she saw photocopies of other letters which contained occasional errors and were signed off by Mr. Bartenhagen. Appellant asserted that she would complete various projects the way he requested and would have to redo everything as he would deny telling her to do it the original way. She related an incident in 1994 whereby she followed procedures which allowed fax signatures to issue a contract and Mr. Bartenhagen initially refused to sign off on the document and yelled at her. Appellant requested leave in July 1995, but was told it would not be approved until she finished a project. When she completed the task, he asked whether she had received help and appellant did not appreciate that comment. Appellant stated that her place of employment was going to be downsized in the fall of 1995 and that the government set no specific guidelines to follow. She alleged that judging by her supervisor's behavior over the past four years, she would probably be the one removed despite her efficiency and competence. Appellant's job was eliminated in the fall of 1995. Before appellant left the office, her signature power was revoked which upset her. Appellant stated that she spoke with the new district director in 1996 about what had transpired, but he did not appear to understand. She also asserted that when the news of her termination hit the farmers, it created a lot of controversy and she received a lot of telephone calls from the farmers wanting to know if there was anything they could do to change the decision. Appellant stated that she asked for recommendation letters to aid in the possibility of a transfer. Such recommendation letters are part of the record.

Appellant interviewed for a transfer for the Washington County office on October 16, 1995. She stated that Dale Rickert made it clear during the interview that if there was a reduction-in-force (RIF), she would not be the first to go. Appellant was transferred to the Washington County office. At the Washington County Office, she alleged that her supervisor, Mr. Rickert, had told other staff members that she was "the best thing that ever happened to his office in a long time." He told her that, if there was going to be another "cutback," she would not be the first to go as he was dissatisfied with two other staff members' work. She stated that she reviewed those staff members' work for mistakes. Appellant asserted that Mr. Rickert had told some of his "buddy" staff that he would hire her on, but put off writing a job description as he was planning to retire in October 1996. She stated that she felt she was left hanging because it would be easy to abolish her position without a written job description. Appellant noted that things became unbearable at the Washington County office when there were talks about cutting back. She described problems such as being excluded from office conversations which she described as centering around gossip. Appellant was directed to review and correct other employees' work and experienced resentment from her coworkers. She thought that the other workers viewed her as a threat. Appellant expressed concern about not being considered an "expert" in any given program and felt that she did the work more accurately than her coworkers and Mr. Rickert always had her correcting their mistakes.

On May 2, 1996 appellant passed out in the bathroom at the office. She has a history of passing out due to her vasospastic migraine headaches. Appellant had previously told the staff, in writing, that if she should ever pass out at the office, they were not to call 911 as she would be fine. They called 911 anyway, which upset appellant as she thought her written permission was adequate. The employing establishment also requested medical information as they viewed

appellant's passing out as a serious medical crisis. Appellant felt that this violated her confidential rights.

During a counseling session, appellant expressed suicidal ideations concerning the impending RIF. On November 22, 1997 she was terminated from her job position. Appellant was hospitalized immediately after the announcement by a court order arranged by her husband, who had been contacted prior to the announcement. She asserted that she suffered a lot of humiliation because of this and the losing of her job.

The employing establishment noted that Mr. Bartenhagen denied any harrassment or verbal abuse towards appellant. It was noted that, although Mr. Bartenhagen might be lacking in certain people skills when it came to communicating with his staff, it was felt that he was like that with all staff members. It was noted that, during the RIF process of 1995, mangers were offered guidance by the state office in an August 16, 1995 meeting. It was felt that Mr. Rickert often told employees what they wanted to hear and that there was no initiative to reassign program responsibilities within the office.

In a decision dated April 14, 1998, the Office denied appellant's claim on the grounds that appellant did not establish that she sustained an emotional condition while in the performance of duty. By decision dated September 24, 1998, the Office refused to reopen appellant's claim for merit review on the grounds that the evidence submitted was insufficient.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that she sustained an emotional condition while in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition. 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 Act. Where 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 factors such as an employee's fear of a reduction-in-force or her 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 desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] 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.[2] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or

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

[2] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

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.[3]

In the present case, appellant has not established that she sustained an emotional condition while in the performance of duty. Appellant alleged several incidents which she asserts constituted harassment or discrimination. Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.[4] Mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.[5] Appellant failed to provide any such probative and reliable evidence in the instant case. Specifically, appellant alleged that she was harassed, demeaned and discriminated against by Mr. Bartenhagen during the four years she worked for him. She provided examples of what she perceived to be childish behavior on Mr. Bartenhagen's part and frustration in regards to Mr. Bartenhagen's mannerism and conduct when she was working directly with producers. However, the employing establishment investigated appellant's allegations and found that no harassment or discrimination occurred. They noted that Mr. Bartenhagen appeared to be lacking in communication skills with all his employees, not just appellant. The evidence does not substantiate appellant's assertion that she was harassed or discriminated against by Mr. Bartenhagen. Although appellant asserted that many of the farmers witnessed Mr. Bartenhagen's attitude and mannerism, she only provided complimentary statements from her clients.

Appellant's dissatisfaction with Mr. Bartenhagen's supervisory style, *i.e.*, having to redo projects and "knit picking" her letters, and his failure to grant appellant's leave prior to the completion of a project are not within the performance of duty. Her complaints concerning the manner in which her supervisor performed his duties as a supervisor or the manner in which he exercised his supervisory discretion fall, as a rule, outside of compensable factors of employment.[6] There is no evidence reflecting that these administrative acts constituted error or abuse. Her complaints are analogous to frustration over not being allowed to work in a particular job environment and are therefore not compensable.

Regarding appellant's reaction in having to call Mr. Bartenhagen when she is sick is not a compensable work factor when appellant offers no independent evidence that the employing establishment erred or acted abusively in these matters.[7] In this case, appellant has not offered evidence that it was not the usual office practice to call a supervisor when sick. Instead, she

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

[4] *See Marie Boylan*, 45 ECAB 338 (1994); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

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

[6] *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

[7] *Michael Thomas Plante*, 44 ECAB 510 (1993).

reported that she would call another employee at home to report absences. Likewise, the employing establishment's request for medical documentation of appellant's illness in conjunction with appellant's written request that 911 not be called when she passes out, would not be considered abusive but an administrative action in response to their responsibility in a medical crisis.

Regarding appellant's reaction to the reduction in force which took place in August 1995 and November 1996 and the insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[8] Likewise, Mr. Rickert's comments to appellant about her future during a possible reduction-in-force and where he visualizes appellant within the organization is a noncompensable factor of job security as it is not sufficiently associated with assigned duties. Thus, appellant has not established a compensable employment factor under the Act with respect to the reductions in force and/or maintaining her position.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained a stress-related or emotional condition in the performance of duty.[9]

The Board also finds that the Office properly denied appellant's request for reconsideration dated September 13, 1998.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[10] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[11] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[12]

On reconsideration appellant submitted a narrative statement in which she expressed her disagreement with the April 14, 1998 decision. Her narrative statement is a reargument of points previously considered and addressed by the Office. No new evidence was submitted. Thus, the Office properly denied appellant's request for reconsideration dated April 14, 1998.

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[8] *See Artice Dotson* and *Allen C. Godfrey*, *supra* note 2.

[9] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[10] 20 C.F.R. § 10.138(b)(2).

[11] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[12] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The decisions of the Office of Workers' Compensation Programs dated September 24 and April 14, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 11, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member