U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARLENE G. FERNANDEZ and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

Docket No. 99-730; Submitted on the Record;
Issued July 24, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

On March 23, 1998 appellant, then a 34-year-old letter carrier, filed a notice of traumatic injury, alleging that beginning March 14, 1998 she experienced neck spasms, headaches, stomach aches and shaking due to her federal job duties. In various statements, she alleged that her emotional and physical conditions were due to several incidents and conditions at work which aggravated her employment-related back condition for which she had limited abilities and worked under restrictions. The Office of Workers' Compensation Programs treated appellant's claim as an occupational disease claim as multiple incidents at work were cited.

In a supplemental statement, appellant indicated that her claimed emotional and physical conditions arose out of the events which occurred on March 14, 1998. She indicated that Cathy Swarm, a supervisor, had a conversation with her regarding how to case flats and told her to case faster, while speaking to her in a condescending manner. Appellant indicated that 10 minutes later, Ms. Swarm told her that she was going to pull her off her route because she could not complete it in eight hours. When asked for suggestions, appellant stated that she could answer telephones, but still felt that she was capable of delivering mail. Appellant was advised to get back to Ms. Swarm by the end of the day for any suggestions.

Appellant also related that she had a conversation with Alice Ochs, another supervisor, the same day regarding overtime forms and that Ms. Ochs called her a "jerk." Appellant related that she was stunned by the comment, shook her head and felt a pull in her shoulder and neck area with a slight burning sensation in her neck. She indicated that she worked for approximately 15 minutes casing her mail when she asked Ms. Ochs to see a shop steward and Ms. Ochs refused the request. Appellant indicated that her stomach started to twist and she got a slight headache. She advised that during the delivery of her route, she experienced more pain in her shoulder and neck.

When she advised Ms. Ochs of her situation, appellant indicated that the supervisor insisted on sending her to urgent care at Marin General Hospital despite her request to see her own doctor. She further stated that Ms. Ochs called her "dear" when finding out directions to go to the hospital. Appellant also stated that she became panicky at the hospital and wished to be discharged so she could see her own doctor. When she called Ms. Ochs to advise her she was about to be discharged in order to see her own doctor, appellant alleged that she ordered her to stay at the hospital and refused to let her see her own doctor. Appellant indicated that she was treated for a muscle spasm in her neck and saw a psychiatrist at the hospital. She further indicated that she was advised to see her own doctor on March 16, 1998 but that her physician was not available until March 17, 1998. Appellant indicated that her physician's office advised Ms. Ochs that she was going to be out until March 17, 1998 but Ms. Ochs left a message on appellant's machine telling appellant that she must report to work on March 16 and 17, 1998 until her doctor's appointment or she would be absent without leave (AWOL).

Appellant additionally asserted other events attributed to her feelings that she was being discriminated against and harassed by her supervisors. She asserted that an issue on vehicle inspection became a problem since the Postmaster changed her reporting time. Appellant indicated that she could no longer ask the usual carrier or any other letter carrier to help with the inspection and that she had to wait until the acting supervisor found someone to assist her.

Appellant alleged that on April 2, 1998 she asked Ms. Ochs to write down her verbal instructions regarding "advo" coverage as there were too many supervisors giving instructions and they gave conflicting orders. Appellant stated that when Ms. Ochs asked her how much time she needed that day, appellant told her that she was not sure. She asked the supervisor to write any further instruction on the 3996 form she had completed. Appellant asserted that she was also told to take her headphones off one ear. Later in the morning, she noticed that she could not figure out the instructions written on the 3996 form. Appellant also disagreed with her supervisor over the counting of the length of mail. She asserted that her supervisors were causing too many interruptions and she was unable to complete casing the mail. Appellant further alleged that the supervisors tried to make her work past the eight-hour work restriction day provided by her physician.

Appellant submitted medical evidence in support of her claim including a March 14, 1998 report from Dr. Mather Neill, Board-certified in emergency medicine, who diagnosed myofascial thoracic pain and acute situational anxiety and advised appellant that she was not to do any lifting at work over 10 pounds until she was rechecked by her physician, who was following her for a back problem. Psychological reports from Dr. Suzanne Haas-Lyon, a licensed clinical psychologist, indicate that appellant was experiencing an adjustment disorder with mixed anxiety and depression due to work-related stress.

In a decision dated October 26, 1998, the Office denied appellant's claim on the grounds that she did not establish that she sustained an emotional condition while in the performance of duty. The Office limited the claim to a psychological condition related to work factors and

incidents and noted that all issues relating to appellant's accepted lumbar condition, psychological or otherwise, would be addressed under that claim.[1]

The Board finds that appellant has failed to establish 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 Federal Employees' Compensation 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.[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 her 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]

In the present case, appellant has not established that she sustained an emotional condition while in the performance of duty. She 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 the performance of duty.[5] 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

[1] The record reflects that the Office accepted a September 5, 1997 injury for the condition of acute lumbar strain under file number 13 1148136. The Office had earlier accepted October 17, 1995 and October 3, 1994 back conditions as being work related.

[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).

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

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

claim by supporting her allegations of harassment with probative and reliable evidence.[6] Appellant failed to provide any such probative and reliable evidence in the instant case.

Specifically, appellant alleged that on March 14, 1998 Ms. Swarm spoke to her in a condescending manner and told her that she was being pulled off her route. She further alleged that during the same day, Ms. Ochs called her a "jerk." The evidence reflects that on March 14, 1998, appellant's reporting time was changed and she was very unhappy about it. Postmaster Janice L. Reilly indicated that the reporting time was changed because they were unable to get the mail to her route in time for her to work it and leave by her scheduled time. Ms. Reilly further related that they had considered making a minor adjustment to appellant's route because of the excess overtime appellant claimed she needed to complete the route within eight hours. Ms. Swarm indicated that March 14, 1998 was the first day appellant was working her new shift. She stated that appellant's starting time was changed from 7:00 a.m. to 8:00 a.m. to allow the clerks to get the first class mail to her. Ms. Swarm indicated that due to a previous back injury, appellant was allowed to increase her street time by one-half hour, which meant she had to leave for the street one-half hour earlier. Ms. Swarm indicated that she noted that appellant was casing mail incorrectly and appeared to be deliberately pacing herself, so she instructed her on the proper way. She noted that appellant was an on-the-job instructor and well aware of this job requirement and concluded this was a deliberate act to waste time and to cause a confrontation with a supervisor. Ms. Swarm denied ever threatening to remove appellant from her route and related that when she asked appellant to provide suggestions on ways to make it easier to case her mail and deliver it in eight hours, appellant replied to "Do whatever you want."

Given the facts of this case, the Office properly found that it was not factual that Ms. Swarm threatened to pull appellant off her route. Appellant's reaction to Ms. Swarm's instruction regarding proper casing technique and her conversation regarding a possible adjustment to appellant's route relate to an administrative personnel function and the record is devoid of any evidence to establish error or abuse with respect to this administrative matter.

Ms. Reilly noted that on March 14, 1998 Ms. Ochs asked appellant how much overtime was needed or what mail was she leaving for someone else to deliver, which was normal operating procedure. Ms. Reilly noted that appellant stated that she did not know and began to kneel on the floor and count each individual piece of mail she had. Ms. Reilly noted that Ms. Ochs told appellant to stop acting like a "jerk" by counting the letters one by one. Ms. Reilly explained that, how much time is needed is by eyeballing the mail in feet and making an estimate, which appellant knew. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[7] Appellant has not shown how being called a "jerk" by Ms. Ochs when she was counting mail in a manner she knew was not practiced would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[8]

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

[7] *See Mary A. Sisneros*, 46 ECAB 155 (1994); *David W. Shirey*, 42 ECAB 783 (1991); *Alton White*, 42 ECAB 666 (1991).

[8] *See, e.g., Alfred Arts*, 45 ECAB 530 (1994) and cases cited therein (finding that the employee's reaction to

Appellant has also alleged that she did not finish her route on March 14, 1998 because of pain in her shoulders and neck. According to her, before she started her route, she asked Ms. Ochs to see a shop steward which was denied. Ms. Reilly noted that appellant told Ms. Ochs that she wanted to see a shop steward to know her rights regarding the pain in her neck, but did not report the pain in her neck until later in the day. Ms. Reilly reported that Ms. Ochs had told appellant she could see the shop steward later in the day and noted that appellant did not have an immediate right to see a shop steward. Accordingly, the denial of appellant's request to see a shop steward is not accepted as factual.

Appellant's allegations that she was not allowed to see her own physician or that she was required to stay at Marian Hopsital are also not accepted as factual. Ms. Reilly stated that when an employee claims an injury, the supervisor is obligated to provided medical treatment as soon as possible; accordingly, she was sent to the emergency department of the local hospital as appellant's own doctor was not available until Tuesday, March 17, 1998. Ms. Reilly further related that Ms. Ochs called her asking whether appellant could go to her own emergency department with her insurance and she related that appellant could go if she had not been seen by a physician at Marin General by then. Ms. Ochs related that information to appellant while she was on the other line.

Ms. Reilly further related that only appellant, not her physician, called Ms. Swarm and stated that she was going to be out of work from Monday, March 16 to Tuesday, March 17, 1998. Ms. Reilly further related that the employing establishment could accommodate the 10-pound lifting restriction the emergency room physician recommended and gave appellant an offer of limited duty over the telephone to work those days, but appellant refused stating that she wanted to see her own physician. Inasmuch as reporting requirements and limited-duty job offers are administrative personnel functions of the employer, this is not compensable under the Act as there is no showing of any error or abuse in this case.

Appellant's allegations pertaining to the issue of vehicle inspection and supervisor assignments also fall into the category of administrative or personnel actions and are not compensable. Ms. Reilly reported that appellant was advised to ask a supervisor for help in doing a vehicle check because the carrier who normally helped appellant took unauthorized smoke breaks and caused him to be off his route more than necessary. Ms. Reilly noted that it was the supervisor's responsibility to assign someone to appellant because of her difference in reporting time. Ms. Reilly further noted that supervisors make the decision on what mail is to be delivered during the day according to time guidelines. She further indicated that appellant was asked to remove one headphone since wearing headphones on both ears interrupted normal conversation. Ms. Reilly further noted that the employing establishment had done everything appellant's physician had recommended. Inasmuch as the record is devoid of any evidence of error or abuse in the administration of work assignments or instructions issued to appellant, these are not compensable.

---

coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

The October 26, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.[9]

Dated, Washington, D.C.
July 24, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[9] As appellant failed to allege a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence; *see Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.