

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY A. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Compton, CA

*Docket No. 99-741; Submitted on the Record;
Issued July 19, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
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 the present appeal and finds that appellant has not met her burden.

On March 31, 1998 appellant, then a 43-year-old clerk/timekeeper, filed an occupational disease claim, alleging that "a very grievous and discriminatory act" on March 18, 1998 caused a major depression. She alleged that this was done because she had filed an Equal Employment Opportunity (EEO) complaint and noted that she had filed a previous stress claim with the Office of Workers' Compensation Programs.¹ She had stopped work on March 19, 1998. By letter dated May 19, 1998, the Office informed appellant of the type evidence needed to support her claim and, in a response submitted to the Office on June 23, 1998, appellant provided a history of her 1993 claim and contended that denial of leave to attend a family funeral and having an improper chair caused stress and demonstrated discrimination. She stated that on March 18, 1998 a coworker, Linda Strider, was in her office on break when L. Franklin came into the office and informed Ms. Strider that he needed to talk with her. Ms. Strider later returned and Mr. Franklin came after her, telling her that she was not to go to appellant's office. Appellant related that a heated discussion then took place between Mr. Franklin and her and that the postmaster, Mr. Hector, entered the discussion. Appellant indicated that she was upset because she was being discriminated against regarding with whom she could take breaks in retaliation for her prior EEO complaint and provided examples of what she considered disparate treatment. By decision dated August 18, 1998, the Office denied the claim, finding that the evidence of record

¹ The record indicates that by decision dated December 12, 1994 an Office hearing representative denied appellant's claim that she sustained either employment-related stress or injury to her right hand and wrist. This claim was adjudicated by the Office under file number 13-1018473. The instant claim was adjudicated under file number 13-1158836.

failed to establish that the claimed injury occurred in the performance of duty. The instant appeal follows.

Appellant provided a witness statement from Ms. Strider who stated that she was being discriminated against because she was a friend of appellant. She continued that on March 18, 1998 she was escorted by Mr. Franklin to the postmaster's office where she was told that she spent too much time with appellant and was not to visit her office. Ms. Strider related that she then returned to appellant's office to get some papers she had left there and related to appellant what had happened, and Mr. Franklin and the postmaster came into appellant's office and appellant became upset. Gwendolyn Givens also provided a statement indicating that she had witnessed Mr. Franklin entering appellant's office on March 18, 1998 when he asked Ms. Strider to accompany him and noted that, upon Ms. Strider's return to appellant's office, both Mr. Franklin and the postmaster, Mr. Hector, came into appellant's office. After further discussion, appellant became very upset. In a statement dated July 22, 1998, appellant's supervisor, Raymond McCall, advised that he did not personally know what transpired between appellant, Mr. Franklin and Mr. Hector.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴ The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position or secure a promotion. Disabling conditions resulting from an employee's feelings of job insecurity, or the desire for a different job do not constitute personal injury sustained in the performance of duty within the meaning of the Act. In these cases, such feelings are considered to be self-generated by the employee as they arise in situations not related to assigned duties.⁵ While, as a general rule, an employee's emotional

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Donald E. Ewals*, 45 ECAB 111 (1993).

reaction to an administrative or personnel matter is not covered under the Act,⁶ error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonable in the administration of a personnel matter, may afford coverage.⁷ 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.⁸ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹

Regarding appellant's allegations, as a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.¹⁰ The fact that she had filed an EEO complaint, by itself, would not establish that workplace harassment or unfair treatment occurred,¹¹ and the record in this case does not contain any information regarding the EEO complaint other than appellant's statements and an August 8, 1997 letter from her attorney to the EEO Commission.

Regarding her allegations of harassment and discriminatory treatment, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.¹² Mere perceptions of error or abuse are not sufficient to establish entitlement to compensation.¹³ In this case, appellant's claim is focused on her perceived discrimination by the employing establishment regarding with whom she could share break time and particularly concerns the events of March 18, 1998. The Board, however, finds that appellant's emotional reaction arising from the perceived discriminatory policy results from her own desire to work within a particular work environment and from her frustration in her failure to effect desired changes.¹⁴ As these have not been shown to relate to any requirement of her assigned duties, her reaction does not arise in the performance of duty¹⁵ and her reaction is considered to be self-generated as it arose in situations not related to assigned duties.¹⁶

⁶ See *Norman A. Harris*, 42 ECAB 923 (1991).

⁷ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ See *Jimmy Copeland*, 43 ECAB 339 (1991).

¹⁰ 5 U.S.C. §§ 8101-8193; see *Janet I. Jones*, 47 ECAB 345 (1996).

¹¹ See generally *Alice M. Washington*, 46 ECAB 382 (1994).

¹² *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

¹³ See *Curtis Hall*, 45 ECAB 316 (1994).

¹⁴ See *William Karl Hansen*, 49 ECAB ____ (Docket No. 95-2925, issued October 23, 1997).

¹⁵ See *Donald E. Ewals*, *supra* note 5.

¹⁶ *Id.*

While appellant submitted witness statements, these do not rise to the level of establishing error and abuse on the part of the employing establishment as they merely explain that appellant, Ms. Strider, Mr. Franklin and the postmaster, Mr. Hector, were involved in a discussion on March 18, 1998 regarding the amount of time Ms. Strider spent in appellant's office.¹⁷ Likewise, regarding appellant's contention that her stress was employment related because a previous claim had been disallowed, matters relative to the handling of a workers' compensation claim are administrative in nature and do not arise in the performance of duty,¹⁸ as the processing of compensation claims bears no relation to appellant's regular or specifically assigned duties.¹⁹ Lastly, her allegations regarding the denial of leave are not compensable under the Act absent evidence of error or abuse in the administration of the personnel matter,²⁰ and the record in this case contains no evidence that the employing establishment acted in error in this regard. Appellant, therefore, has not submitted sufficient evidence to corroborate that the employing establishment treated her in a discriminatory manner.

Consequently, as appellant has not established a compensable employment factor and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²¹

¹⁷ See *Gregory N. Waite*, 46 ECAB 662 (1995).

¹⁸ See *Bettina M. Graf*, 47 ECAB 687 (1996).

¹⁹ See *Martha L. Watson*, 46 ECAB 407 (1995).

²⁰ *Id.*

²¹ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decision of the Office of Workers' Compensation Programs dated August 18, 1998 is hereby affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member