U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LYNDA MOORE and U.S. POSTAL SERVICE,
PROCESSING AND DISTRIBUTION CENTER, Palatine, IL

*Docket No. 99-771; Submitted on the Record;*
*Issued June 22, 2000*

---

DECISION and ORDER

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

The issue is whether appellant has established that she sustained an emotional condition causally related to compensable factors of her federal employment.

In the present case, appellant, a temporary casual employee, filed a claim on February 27, 1996 alleging that she sustained an emotional condition causally related to her federal employment. The record indicates that appellant worked from May 9 to September 27, 1994, when her employment was terminated. By decision dated April 20, 1996, the Office of Workers' Compensation Programs denied appellant's claim. In a decision dated August 28, 1997, an Office hearing representative affirmed the prior decision. In a decision dated August 18, 1998, the Office reviewed the case on its merits and denied modification.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to her federal employment.

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.[1] 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.[2]

---

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

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

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3]

In the present case, appellant has briefly discussed some aspects of her federal employment, without clearly identifying specific employment factors and offering sufficient details and accompanying evidence to substantiate her claim. Appellant has, for example, alleged on her claim form that she worked 40 to 60 hours per week and in a narrative statement dated February 26, 1996 she asserted that at some point she worked 30 to 45 days in a row. It is not clear whether appellant is claiming that overwork contributed to her condition; she did not discuss her specific work duties, provide details on her specific work schedule, or otherwise explain how the number of hours worked contributed to an emotional condition.[4]

At the July 15, 1997 hearing before an Office hearing representative, appellant alleged that as of July 1994 she was required to work overtime, while Caucasian employees were not required to work overtime. To the extent that appellant is claiming an emotional reaction to racial discrimination, she has not submitted any probative evidence of discrimination. The Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as discrimination may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[5] An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.[6] According to appellant, an equal employment opportunity (EEO) complaint had been filed, but the record contains no evidence with respect to a claim of discrimination.

The remainder of appellant's allegations relate to administrative actions of the employing establishment. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties

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

[4] Overwork may be a compensable factor of employment, but only to the extent that it relates to the performance of the job duties and the record must establish that appellant was in fact overworked; *see Robert W. Wisenberger*, 47 ECAB 406 (1996).

[5] *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

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

of the employee.[7] The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.[8] Appellant has alleged error or abuse as "management failed at reappointment of a casual employee" "taken the action of not giving me an EEO as any other postal employee would have received" and did not receive "equal pay adjustment" during the period between her first and second causal appointments. The record indicates that appellant received a temporary appointment on May 9, 1994, not to exceed August 6, 1994 and received a second appointment commencing August 20, 1994. Appellant's allegations of error are not clearly explained; she did receive a second reappointment and she did apparently file an EEO claim, so it is not clear how the Office erred with respect to an "EEO." With respect to a pay adjustment, the record indicates that appellant was paid a higher hourly wage commencing August 20, 1994. To the extent appellant is alleging error in not receiving a higher hourly wage prior to this date, she has not submitted any probative evidence of error, nor has she explained how such error, if established, contributed to an emotional condition. The Board also notes that at the July 15, 1997 hearing appellant briefly referred to her supervisor yelling at her, without providing additional detail.

The record does establish that appellant's employment was terminated on September 27, 1994, for failure to follow instructions, conduct unbecoming of a postal employee and insubordination. Appellant submitted a decision dated August 10, 1995, from the Illinois Department of Employment Security with respect to entitlement to unemployment insurance benefits. This decision determined that appellant was not fired for "misconduct" as that term is defined under the applicable state statutory authority. It does not, however, constitute evidence of error or abuse in the termination action. The hearing referee found that the employer, who failed to appear or submit evidence, did not meet its burden of proof to establish "misconduct" by the employee and, therefore, appellant was not disqualified for unemployment benefits. The standard of "misconduct" is limited to the issue of entitlement to state unemployment benefits; it does not establish that the termination action itself was erroneous or abusive. The Board finds no probative evidence of error or abuse in the termination action by the employing establishment.

The Board accordingly finds that appellant has not alleged and substantiated a decision of employment as contributing to an emotional condition. It is also noted that even if appellant can establish a compensable work factor, she must submit probative medical evidence with an opinion on causal relationship between an emotional condition and the compensable work factor(s). The record contains no probative medical evidence on causal relationship in this case.

[7] *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

[8] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

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

Dated, Washington, D.C.
June 22, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member