

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENYCE K. ATKINS and U.S. POSTAL SERVICE,
O'HARE AIR MAIL FACILITY, Chicago, IL

*Docket No. 99-857; Submitted on the Record;
Issued June 28, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition and migraine headaches while in the performance of duty.

On April 17, 1998 appellant, then a 34-year-old clerk, filed a notice of occupational disease (Form CA-2) alleging that she became aware of her migraine headaches on March 31, 1998 and that on April 1, 1998 she first realized her migraine headaches were caused by her supervisor's harassment. In an attached statement dated April 17, 1998, she alleged that her supervisor constantly harassed her by verbal attacks and intimidation of her during her work shift. Specifically, appellant stated that, on April 12, 1998, Darlene Brooks, supervisor -- distribution operations, accused appellant of shutting the flat sorter machine down by deliberately hitting the stop button on appellant's console and then Ms. Brooks addressed the entire unit instructing them that the person hitting the stop button on their console should cease hitting the button. She alleged that, after this incident, Ms. Brooks started to threaten and badger her continuously, that Ms. Brooks sent appellant out of her bidded assignment while retaining part-time flexible substitutes in the unit, that Ms. Brooks threatened appellant with discipline if she did not work overtime, that appellant was assigned to do extra work when a machine jam occurred, that appellant was reprimanded for talking to her coworkers and her coworkers were reprimanded for talking to her and that Ms. Brooks constantly stood by her key station monitoring her work.

In a prescription note dated April 23, 1998, Dr. Karen Bais¹ opined that appellant was totally disabled due to her migraine headaches and acute depression due to her problems at work.

In a letter dated April 24, 1998, Dr. Bais indicated that she had been treating appellant for abdominal and acute sharp chest pains as well as migraine headaches. She noted that appellant had related that she had been "constantly chased [and] harassed by her supervisor."

¹ An attending physician who specialized in family practice.

On May 16, 1998 the employing establishment issued appellant a notice of removal for failure to report to work which was rescinded on June 11, 1998 by mutual agreement between the employing establishment and the union.

In a letter dated May 20, 1998, appellant stated that on May 8, 1998 she had spoken with the postal inspector regarding harassment by Ms. Brooks and ill treatment of her and stated that at that time she was out of work due to her illness. She alleged that Ms. Brooks had been harassing her at work and had harassed her outside of work since Ms. Brooks had followed appellant to her home on April 1, 1998.

By letter dated May 26, 1998, the Office of Workers' Compensation Programs advised appellant as to the deficiencies in her claim and advised her as to the necessary factual and medical evidence necessary to support her claim.

In a letter dated May 27, 1998, Ms. Brooks denied appellant's allegations that she had harassed appellant; she noted that she never sent appellant out of her bidded unit; stated that she did ask appellant to stop taking notes and instructed appellant, at that time, to perform her work duties; and advised that appellant informed her on April 23, 1998 that appellant was not going to follow her instructions. She said that appellant was placed in an off-duty status for continuously disrupting the work operations. Ms. Brooks noted that part of her duties included the monitoring of operations and meeting operating goals.

In a letter dated June 1, 1998, appellant provided additional details of harassment she alleged she was subjected to at work which were mentioned in her April 17, 1998 statement as well as detailing events through April 23, 1998. She alleged that Ms. Brooks instructed her not to take notes of when the jams occurred and to just work and that Ms. Brooks was out to get her. On April 1, 1998 appellant alleged that Ms. Brooks followed her home from work and followed appellant on her way to work the next day. She alleged that she notified Ms. Brooks that she had injured her hand on April 3, 1998, but Ms. Brooks insisted that she continue keying although she did provide appellant with a Form CA-2 to complete. In addition, appellant stated that she had not been paid for her requested family medical leave sick leave and that the part-time flexible clerks told her that Ms. Brooks "often instructs them to take the employees' time cards and make moves with them."

In an undated letter received by the Office on June 4, 1998, Dr. Bais noted that appellant had been under her care for migraine headaches secondary to insomnia and acute depression. Dr. Bais attributed her condition to harassment by her supervisor as the symptoms began after appellant's supervisor started harassing her on April 1, 1998.

In a June 18, 1998 statement to the postal police, appellant alleged that her supervisor followed her, tailgated her and "drove on my bumper." She also alleged that Ms. Brooks had followed her on previous occasions to harass her.

In a letter dated July 2, 1998, appellant stated that she had been fired due to her mother's letter to the postmaster general regarding appellant's treatment by the employing establishment. She noted that she had been issued a letter of removal after she had filed a grievance and reiterated her allegations of harassment by Ms. Brooks.

In a letter dated August 4, 1998, Gerald J. Kubrick, plant manager, responded to appellant's allegations by denying that she had been harassed. He denied that Ms. Brooks had harassed appellant or acted in any improper manner towards her.

Appellant submitted notes from Dr. Ronald J. Lotesto,² indicating that she was under his care for treatment of her migraines.

By decision dated November 6, 1998, the Office denied appellant's claim stating that she had not sustained her burden of proof to establish that an injury in the performance of duty had occurred.

The Board finds that appellant has not met her burden of proof in establishing an emotional condition and migraine headaches were sustained while in the performance of duty.

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 his federal employment.³ 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 he 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.⁴

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.⁵ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁷ The issue is not whether the claimant has

² A physician Board-certified in psychiatry and addiction psychiatry.

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Dinna M. Ramirez*, 48 ECAB 308 (1997); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *Michael Ewanichak*, 48 ECAB 364 (1997); *Lillian Cutler*, 8 ECAB 125 (1976).

⁷ *Michael Ewanichak*, *supra* note 6; *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

established harassment or discrimination under standards applied by the Equal Employment Opportunity Commission. Rather, the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁸ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁹

The initial question presented is whether appellant has alleged compensable factors of employment that are substantiated by the record. Appellant stated that her migraine headaches began after being harassed by her supervisor, Ms. Brooks. Specifically, appellant alleged that Ms. Brooks accused her of hitting the stop button on her console which shut down the flat sorter machine and then addressed appellant's unit regarding appellant's hitting the stop button. Appellant also alleged that Ms. Brooks started to harass her on a daily basis after a union official spoke to her on your behalf. Next, she alleged that Ms. Brooks followed and watched her at all times and that she would unnecessarily threaten appellant with discipline when the entire unit was required to work overtime. Appellant also alleged that Ms. Brooks tailgated and followed her home. Lastly, she claims that her leave time was not properly recorded by Ms. Brooks. In order to establish compensability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment are not compensable.¹⁰

Regarding appellant's allegations that the employing establishment improperly assigned work duties, moved her from her bidded area, unreasonably monitored her activities at work, unnecessarily threatened her with discipline and did not properly record her leave, the Board finds that these allegations relate to administrative or personnel matters unrelated to the employee's regular or specially assigned duties and do not fall within coverage of the Act.¹¹ Although the handling of disciplinary actions, leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹² However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board must examine whether the employing establishment acted reasonably.¹³ Appellant has failed to establish a factual basis for her allegations as she has not presented evidence corroborating the incident she described and has not shown that the employing establishment acted abusively or unreasonably.¹⁴ On the other hand, the employing establishment submitted statements from Ms.

⁸ See *Martha L. Cook*, 47 ECAB 226 (1995).

⁹ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

¹⁰ *Sharon R. Bowman*, 45 ECAB 187 (1993); *June A. Mesarick*, 41 ECAB 898 (1990).

¹¹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ See *Daryl R. Davis*, 45 ECAB 907, 911 (1994); *Barbara J. Nicholson*, 45 ECAB 803, 809 (1994).

Brooks and Mr. Kubick denying that any abuse or unreasonable actions occurred. Furthermore, the mere fact that the employing establishment lessens a disciplinary action against an employee does not establish that the employing establishment erred.¹⁵ Thus, appellant has not established a compensable factor under the Act with respect to administrative matters.

Regarding alleged harassment, to the extent that the incidents alleged as constituting harassment by her supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁶ However for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹⁷ In the instant case, the employing establishment denied any harassment by appellant's supervisor and appellant has presented no corroborating evidence, such as witness statements, to establish that the actions actually occurred.¹⁸ While appellant did submit a June 18, 1998 statement to the postal police in which she alleged that her supervisor followed her and tailgated her on her way home, there is no report by the postal police corroborating appellant's allegation. Thus, this evidence is insufficient by itself as it is another uncorroborated statement by appellant. She has not submitted sufficient evidence to substantiate her allegations of harassment in this case and, thus, has not established a compensable employment factor under the Act with respect to the claimed harassment by Ms. Brooks.

Inasmuch as appellant has not established that there were any compensable factors of employment or that management acted unreasonably in its treatment toward her, she has failed to establish that her migraine headaches were causally related to factors of her federal employment. Since no compensable factors of employment have been established, it is not necessary to address the medical evidence.¹⁹

¹⁵ *Garry M. Carlo*, 47 ECAB 299 (1996) In this case, the June 11, 1998 rescission of removal was without prejudice and did not make any findings consistent with unreasonable actions of the employing establishment.

¹⁶ *See David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁷ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁸ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with reliable and probative evidence).

¹⁹ *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).

The decision of the Office of Workers' Compensation Programs dated November 6, 1998 is affirmed.

Dated, Washington, D.C.
June 28, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member