

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANA N. HAYES and U.S. POSTAL SERVICE,
SOUTH SUBURBAN DIVISION, South Suburban, IL

*Docket No. 96-1535; Submitted on the Record;
Issued March 6, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty on February 10, 1994, causally related to compensable factors of her federal employment.

On February 18, 1994 appellant, then a 49-year-old distribution clerk, filed a claim alleging that on February 10, 1994 during a "job talk" meeting with the crew, the in-plant manager opened the floor for questions and then embarrassed appellant in front of the crew by saying that he would buy her a cup of coffee for her suggestion. Appellant alleged that she sustained stress/anxiety from the incident. She stopped work on February 18, 1994 and went home. The employing establishment controverted appellant's claim, indicating that appellant did not immediately seek medical care and indicated that no time was lost from work.

By letter dated March 14, 1994, the Office of Workers' Compensation Programs requested further information in support of appellant's claim.

A telephone conference was held on March 16, 1994 between appellant and the claims examiner. In a memorandum of conference dated March 21, 1994, the claims examiner noted that during a meeting, the support manager, Mr. Kubick opened the floor for questions, appellant raised her hand, and asked whether cash awards would be given for suggestions which were used. Appellant then alleged that the manager laughed and stated that he would buy her a cup of coffee for her suggestion. Appellant also alleged that she had had prior conflicts with Mr. Kubick, citing an incident in October when he "cornered" her in the work area and said, "Hello, Ms. Hayes. Are you avoiding me?" Appellant stated that the manager had said this in an oppressive manner.¹ Appellant also complained that leave she had requested in December was

¹ In another statement regarding this incident appellant explained that on October 19, 1993 Mr. Kubick said, "Hi!" that she ignored him, and that then he said, "Oh, you are not going to speak?." Appellant claimed that she replied that she had nothing to say to him, and then she walked away.

disapproved, and that she was not advised of such when she had asked several times prior to the date of the requested leave. Appellant apparently became angry over this and was escorted by the postal police, at the manager's request, off the premises. The police allegedly had stated that she had been reported "unfit for duty," but they allegedly told her that they did not see why, as she was not making a scene.

Appellant filed a grievance about the October 19, 1993 incident claiming that she felt anxious, stressed and intimidated when in Mr. Kubick's presence and she requested that he not approach her or try to talk with her.

Appellant also filed a grievance alleging that Mr. Kubick harassed her and retaliated against her by referring her to employee assistance. She alleged that Mr. Hamilton from employee assistance called her and asked whether she was the person carrying the picket sign walking outside the employing establishment before Christmas. Appellant additionally filed a grievance over the December denial of the requested leave, and other denied leave requests, over a letter of warning, and over retaliation due to union activity related to grievances.

Appellant submitted a January 8, 1993 report from Dr. Milton H. Daugherty, a Board-certified psychiatrist, which noted that he had been treating appellant for "major depressive disorder" since December 4, 1992. Appellant further submitted complaints alleging stress from and retaliation by Mr. Kubick and the plant manager, Mr. Fields, during a meeting about equal employment opportunity (EEO) complaints regarding discrimination due to race (black) and handicap (anxiety and stress). Appellant alleged that Mr. Fields gave her two minutes to state her concerns, that Mr. Kubick sat back and said nothing, and that both he and Mr. Fields were white. She also alleged that she showed up as a union representative at an October 15, 1992 EEO hearing which had been canceled, but that she had not been notified.

Appellant additionally submitted multiple statements addressing the "buy her a cup of coffee" statement from Mr. Kubick. She also provided a June 3, 1993 letter to Mr. Fields in which she noted his recommendation that she see a psychiatrist, and requested three months of paid administrative leave to see the psychiatrist of her choice at the employing establishment's expense.²

By letter dated February 19, 1994, appellant again requested one month of paid administrative leave based upon Mr. Kubrick's conduct regarding the "cup of coffee" comment. Appellant alleged that she felt physically threatened, which caused her stress and anxiety.

Appellant submitted a February 22, 1994 medical progress note from Dr. J.H. Roberts, an osteopath, which stated: "Discussed problem [with] [appellant]. She has difficulties at work with supervisory personnel and gets very nervous and upset about it."

A July 12, 1994 report from Dr. William W. Ashley, a Board-certified internist, noted that appellant had been seen by him over the years, that she presented with numerous

² This leave request was denied.

complaints, and that they thought that this represented somatization of her stress. He suggested a diagnosis of “job-related stress syndrome,” and referred her to a psychiatrist.

By decision dated August 23, 1994, the Office rejected appellant’s emotional injury claim finding that the evidence of record failed to support that an injury was sustained as alleged. The Office accepted that the events identified occurred as alleged, but found that there was no medical evidence relating appellant’s condition to the incident of February 10, 1994.

By letter dated September 22, 1994, appellant requested an oral hearing. A hearing was held on January 26, 1995 at which appellant testified. She also submitted further medical evidence. By decision dated March 24, 1995, the hearing representative found that none of the events from 1992 through 1994 implicated by appellant in causing her condition were compensable factors of her employment and that none of the medical evidence was sufficient to relate appellant’s diagnosed condition(s) to any of these events, had they proved compensable.³

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty on February 10, 1994, causally related to compensable factors of her federal employment.

To establish appellant’s occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized 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.⁴ Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁵

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 of workers’ compensation. These injuries occur in the course of employment and have some kind

³ By letter postmarked March 23, 1996, appellant appealed the March 24, 1995 decision to the Board. The Board docketed this case and took jurisdiction on April 18, 1996. On September 26, 1996 appellant requested reconsideration of the March 24, 1995 decision by the Office, which was denied by decision dated December 19, 1996 as being untimely requested. As the Board had already taken jurisdiction over this case, the December 19, 1996 decision by the Office was null and void for lack of jurisdiction; *see generally Charles E. Davis*, 39 ECAB 322 (1987); *Clifford F. Russell*, 37 ECAB 567 (1986); *Edward M. Beebe*, 34 ECAB 982 (1983).

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

⁵ *Id.*

of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁶ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁷ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁸

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.⁹ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁰ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹¹ If the evidence fails to establish that any compensable factors of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In the present case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.

Appellant has not alleged that she developed an emotional condition arising out of her regular or specially assigned duties, or out of specific requirements imposed by her employment. She alleged, for the most part, that her condition was caused by supervisory harassment or

⁶ *Donna Faye Cardwell*, *supra* note 4; *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Id.*

⁸ *See Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁹ *See Barbara Bush*, 38 ECAB 710 (1987).

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹¹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

“retaliation.” The Board has held that actions of an employee’s supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹² However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹³

The Board finds the actions and comments appellant alleged as harassment or retaliation occurring in the performance of duty, were either administrative in nature or were merely nonthreatening, nonharassing attempts at friendly communication with appellant. Mr. Kubick’s offer to buy appellant a cup of coffee in response to her question about whether cash awards should be given for employees’ suggestions was merely an attempt at humorous communication, which does not rise to the level of harassment.¹⁴ This comment is not, in itself, insulting, demeaning, threatening or otherwise degrading; it was not either based upon race or sex or was not otherwise discriminatory, and none of appellant’s grievances regarding this comment have been upheld. This is also true about Mr. Kubick saying “Hi” to appellant or asking, after she blatantly ignored his salutation, whether she was avoiding him. Her grievances about this incident were also not upheld. Hence these comments do not rise to the level of harassment and are not compensable factors of appellant’s employment. Appellant’s perceptions of harassment are not compensable.

Another of appellant’s allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*¹⁵ the Board held that an employee’s emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would apply if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹⁶ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include the multiple denials of appellant’s various leave requests and the letter of warning.¹⁷ Appellant has made no showing that these refusals of leave or the letter of warning were erroneous or abusive, and

¹² *Sylvester Blaze*, 42 ECAB 654 (1991).

¹³ *Ruthie M. Evans*, *supra* note 10.

¹⁴ *See generally, Mary A. Sisneros*, 46 ECAB 155 (1994) (appellant’s allegations pertained to her perceptions alone, and her feelings of dissatisfaction were therefore self-generated and noncompensable).

¹⁵ 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991).

¹⁶ *See Richard J. Dube*, 42 ECAB 916 (1991).

¹⁷ *See Martha L. Watson*, 46 ECAB 407 (1995) (denial of leave); *Gregory N. Waite*, 46 ECAB 662 (1995) (letters of warning).

therefore she has not demonstrated that they constitute compensable factors of employment.¹⁸ Mr. Kubick's "cup of coffee" comment during an administrative meeting in response to appellant's question about cash awards for suggestions, does not rise to the level of administrative error or abuse, and no such evidence to the contrary was presented by appellant.

The Board also finds that other factors that appellant alleged which are not covered under the Act, and include stress from her involvement with her own and another worker's EEO complaints and grievances.¹⁹ The Board has held that stress or frustration resulting from failure to obtain appropriate redress or corrective action from other administrative agencies with which the complaints are filed against the employing establishment are not compensable under the Act because such actions of the particular administrative agency in reviewing and investigating the charges and rendering a decision thereon do not have any relationship to the employee's regular or specially assigned duties.²⁰ Accordingly, none of appellant's allegations of stress from or retaliation for her union grievance activities are compensable factors of her employment.

As appellant has presented no evidence to implicate a compensable factor of employment in the causation of her condition beginning in 1992 or continuing through 1994 and thereafter, she has failed to establish her emotional illness claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 24, 1995 is hereby affirmed.

Dated, Washington, D.C.
March 6, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁸ Also, no grievances regarding these instances were upheld.

¹⁹ See *Eileen P. Corigliano*, 45 ECAB 581 (1994); *Donna Faye Cardwell*, *supra* note 4.

²⁰ *Donna Faye Cardwell*, *supra* note 4.