U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA CANDELARIO and U.S. POSTAL SERVICE,
POST OFFICE, Hayward, CA

Docket No. 99-259; Submitted on the Record;
Issued May 18, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On August 16, 1997 appellant, then a 40-year-old letter carrier, filed an occupational disease claim alleging that she sustained "stress caused by manager Raul Acosta" in the performance of duty. She did not stop work.

By decision dated November 14, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office found that she had not alleged any compensable factors of employment. In a letter received by the Office on December 15, 1997, appellant requested a review of the written record by an Office hearing representative. By decision dated July 15, 1998, the hearing representative affirmed the Office's November 14, 1997 decision.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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 an 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 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.[1] On the other hand, the disability is not covered where it results from such factors as an

[1] 5 U.S.C. §§ 8101-8193.

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.[2]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.[3] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[4]

In the present case, appellant has alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered factors under the terms of the Act.

Appellant attributed her emotional condition to disciplinary actions taken by the employing establishment. Reactions to disciplinary matters such as letters of warning and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable unless it is established that the employing establishment erred or acted abusively in such capacity.[5] The record indicates that appellant received letters of warning on July 29 and August 4, 1997 for being absent without leave. Appellant further received a 14-day suspension on August 14, 1997 for failing to follow instructions and a 7-day suspension on July 29, 1997 for irregular attendance. The letters of warnings were both expunged from appellant's record without prejudice to either party on September 23, 1997. The employing establishment further reduced appellant's 14-day suspension to a letter of warning and rescinded the 7-day suspension. However, the fact that the employing establishment lessens or reduces a disciplinary action or sanction does not establish abuse.[6] In this case, appellant has not submitted any evidence corroborating her allegations of error or abuse by the employing establishment and thus has not established a compensable factor of employment.[7]

---

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

[4] *Id.*

[5] *Barbara E. Hamm*, 45 ECAB 843 (1994).

[6] *Barbara J. Nicholson*, 45 ECAB 803 (1994).

[7] Appellant argued that she received the discipline for leave previously approved under the Family and Medical Leave Act but submitted no evidence in support of her contention.

Appellant further alleged that her supervisor, Mr. Acosta, harassed her by erroneously charging her with misconduct, changing her work schedule 4 times in 2 weeks, bringing her into his office 13 times, and threatening her job. She additionally contended that a prior supervisor, Ace Boroga, told her that she was "useless and good for nothing" because she was on limited-duty employment due to a prior shoulder injury. Actions of an employee's supervisor or coworker which the claimant characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.[8] Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[9] An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.[10] 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.[11]

In the present case, the Board finds that appellant has not supported her allegations of harassment and discrimination with sufficient probative evidence. In response to appellant's contentions, Mr. Acosta related in a letter dated February 20, 1998, that he had changed appellant's schedule in an effort to accommodate her limited-duty requirements, transportation problems and "inability to get along with her peers." He further indicated that appellant had received the same disciplinary actions as any similarly situated employee. Appellant has submitted no independent evidence in support of her allegations of harassment and thus has not established a compensable factor of employment.

With regard to appellant's allegation that her supervisor assigned her work outside her physical limitations, the Board notes that this could constitute a compensable employment factor if substantiated by the record.[12] Specifically, she alleged that an assigned position was outside of her limitations because her physician wanted her work hours to remain the same in order for her to commute with family members. However, the record does not contain probative medical evidence establishing that appellant had specific limitations that the employing establishment refused to accommodate. Instead, the employing establishment indicated in its work assignments that she should stay within the restrictions provided by her physician at all times. Accordingly, appellant has not substantiated her allegation that she performed work outside her limitations.

Appellant further indicated that Mr. Ennis Poole, a supervisor with the employing establishment, "had a safety talk with me [and] read a paper to me then forged my signature on the paper." In a statement dated December 9, 1997, Mr. Anthony B. Gonzales, appellant's union representative, noted that Mr. Poole admitted signing appellant's initials to safety talks. The

[8] *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

[9] *See Lorraine E. Schroeder*, 44 ECAB 323 (1992).

[10] *William P. George*, 43 ECAB 1159 (1992).

[11] *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

[12] *See Minnie L. Bryson*, 44 ECAB 713 (1993).

employing establishment did not comment on appellant's allegation. The unauthorized signing of appellant's initials by a supervisor would constitute error on behalf of the employing establishment and the Board finds that in order to establish her claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to an identified compensable employment factor.[13] In the instant case, appellant submitted a report dated November 25, 1997 from Dr. Thomas R. Powers, a Board-certified psychiatrist, who noted appellant's complaints of harassment, reprimands and work assignments outside her limitations. He diagnosed "[a]cute versus post-traumatic stress reaction, "[m]ajor depression with suicidal and homicidal ideations, [and] [a]nxiety disorder, with mixed features." Dr. Powers indicated that job stress was the precipitating event for appellant's condition.[14] As he did not relate appellant's emotional condition to a supervisor signing her initials on a safety paper, his report is of little probative value.

In a report dated December 19, 1997, Dr. Powers indicated that appellant related that her supervisor harassed her, changed her work hours and threatened her with the loss of her job.[15] He did not render a diagnosis or a causation finding and thus his report is insufficient to meet appellant's burden of proof. Appellant, therefore, has not submitted rationalized medical opinion evidence sufficient to establish that she sustained an emotional condition causally related to her employment.

[13] *See William P. George*, *supra* note 10.

[14] In a report dated November 10, 1997, Dr. Ash Jain, a Board-certified internist, diagnosed depression and gastritis and noted that appellant was "stressed at work." In a report dated November 13, 1997, Dr. Jane H. Wardzinska, who specializes in family practice, discussed appellant's problems with her supervisor and that she felt "singled out" due to "medical problems with her shoulder."

[15] Emotional conditions resulting from an employee's fear of a reduction-in-force or feelings of job insecurity are not considered within the performance of duty under the Act. *Sharon K. Watkins*, 45 ECAB 290 (1994).

The decisions of the Office of Workers' Compensation Programs dated July 15, 1998 and November 14, 1997 are hereby affirmed.

Dated, Washington, D.C.
May 18, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member