

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESLIE D. FERRERO and U.S. POSTAL SERVICE,
POST OFFICE, Cedarville, OH

*Docket No. 99-1328; Submitted on the Record;
Issued November 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained an emotional condition in the performance of duty.

On September 8, 1997 appellant, then a 42-year-old carrier, filed an occupational disease claim alleging that she sustained an "anxiety disorder, secondary to injury." She stopped work on August 11, 1997 and did not return.

By decision dated December 2, 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 dated February 28, 1998, appellant requested reconsideration of her claim. The Office denied her request for reconsideration in a nonmerit decision dated March 12, 1998. Appellant again requested reconsideration on December 1, 1998. By decision dated December 15, 1998, the Office denied her request for reconsideration on the grounds that the evidence submitted did not warrant modification of its December 2, 1997 decision.

The Board 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 this 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 harassment by her supervisor, Roy Conover and by coworkers. 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.⁵ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁶ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.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

Appellant related that after she fell at work on July 7, 1997 she reported her injury to Mr. Conover, who began mumbling with a bright red face. She stated that Mr. Conover took her to seek medical treatment the next day but did not abide by the restrictions imposed by the physician. Appellant further contended that on July 10, 1997 Mr. Conover told coworkers that

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

⁶ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

⁷ *William P. George*, 43 ECAB 1159 (1992).

⁸ See *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

her fall did not cause her injury; that a man in a green car followed her on July 12, 1997 while she delivered mail; and that Mr. Conover “blew up” at her on July 15, 1997 when she provided him with additional physical restrictions. She also alleged that Mr. Conover stopped greeting her in the morning, was repeatedly rude and told others loudly that when someone crossed him he got even. Appellant further stated that Mr. Conover called her at 11:30 p.m. to tell her to report for work the next morning and that a customer informed appellant that Mr. Conover was going to “get her.” She additionally indicated that Mr. Conover asked the union representative how to get rid of her and stared at her. Appellant related that Mr. Conover issued her a paycheck on July 25, 1997 for an inaccurate amount, snickered and said that it “does [not] pay to be hurt.” She described other incidents of cars following her as well as a telephone threat. Appellant also contended that following her injury her coworkers did not speak to her and whispered about her. In support of her claim, appellant submitted a statement from Ms. Shelia Blair, who primarily described her own treatment by Mr. Conover following an injury. Regarding appellant, Ms. Blair stated that Mr. Conover “would share his opinion about her to everyone in the office. He also made [appellant’s] performance on the job known to everyone in the office whether or not it was good or bad.”

In this 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. Conover related that his face was not red and he did not mumble on July 7, 1997 when appellant told him of her injury; that he told appellant to work within her restrictions; that he did not say that her fall did not cause her injury; that he had no knowledge of cars following appellant or coworkers not speaking to her; that he did not stare at appellant; and that he did not “blow up” at her when provided with additional work restrictions. Mr. Conover further related that on July 17, 1997 he had called appellant throughout the day but did not receive an answer until 11:30 at night. He acknowledged that he made an error in one of appellant’s paychecks but denied saying that it did not pay to be hurt. Mr. Conover indicated that he filled out the necessary form to correct appellant’s paycheck.⁹

Appellant alleged that her supervisor and coworkers engaged in actions which she believed constituted harassment and discrimination, but she did not provide sufficient corroborating evidence to establish that the statements actually were made or that the actions actually occurred.¹⁰ The only supporting evidence provided by appellant is the statement from Ms. Blair, who indicated that Mr. Conover discussed appellant but provided no specific examples. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

⁹ While Mr. Conover admitted making a mistake in calculating one of appellant’s paychecks, appellant has not alleged that the error itself caused her emotional condition but rather that it demonstrated harassment towards her by Mr. Conover.

¹⁰ See *William P. George*, see *supra* note 7.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹¹

The decision of the Office of Workers' Compensation Programs dated December 15, 1998 is hereby affirmed.

Dated, Washington, DC
November 20, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).