

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MIRIAM BODWELL and U.S. POSTAL SERVICE,  
HERITAGE POST OFFICE, Schenectady, NY

*Docket No. 99-1957; Submitted on the Record;  
Issued November 8, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,  
VALERIE D. EVANS-HARRELL

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

Appellant filed an occupational disease claim on October 30, 1997 alleging that she sustained a dysthymia disorder causally related to her federal employment. In an accompanying statement, appellant asserted that she was subject to harassment and intimidation by her supervisor.

By decision dated May 26, 1998, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established compensable work factors as contributing to an emotional condition. In a decision dated May 3, 1999, an Office hearing representative affirmed the prior decision.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to compensable work factors.

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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *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 to 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.<sup>3</sup>

In this case, appellant has alleged that she suffered an emotional reaction to actions of her supervisor, which appellant characterized as harassment. According to appellant, her supervisor constantly changed her mail route and her work procedures, unfairly singled appellant out for disciplinary action and constantly monitored her work. In order to substantiate these allegations as compensable work factors, however, there must be probative evidence supporting a finding of harassment or erroneous action in an administrative matter. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.<sup>4</sup> 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.<sup>5</sup> With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment 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.<sup>6</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>7</sup>

In this case, the evidence of record is not sufficient to substantiate a compensable work factor. The record indicates that appellant filed a grievance with respect to an October 1, 1997 incident that appellant described as part of continuing campaign of harassment by her supervisor.<sup>8</sup> By letter dated October 9, 1998, the grievance was denied, and there is no finding of error or abuse with respect to the results of any grievance filed.

In support of her claim of harassment, appellant submitted brief statements from several coworkers. As noted by the hearing representative, these statements were actually not written by the individual coworkers, but by a union steward, and then signed by them. The probative value

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>5</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>6</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>7</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>8</sup> A second grievance was also filed alleging that the supervisor gave preferential treatment to her husband.

of these statements is limited in that they contain no detail or discussion of specific incidents. Several statements assert that appellant was harassed, without providing any additional explanation or description of incidents on which a claim of harassment could be supported.

The Board is unable to find any probative evidence that is sufficient to establish a claim for an emotional condition based on harassment by a supervisor. Similarly, the record does not contain reliable evidence establishing error or abuse in an administrative action taken by the employing establishment.

Appellant alleges, for example, that changes were made to her route and work procedures, but the supervisor indicated that the changes were made to promote efficiency in the work operation and were planned before appellant took over the route. In the absence of probative and reliable evidence, the Board finds that appellant has not established a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>9</sup>

The decision of the Office of Workers' Compensation Programs dated May 3, 1999 is affirmed.

Dated, Washington, DC  
November 8, 2000

Michael J. Walsh  
Chairman

Priscilla Anne Schwab  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).