

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNETTE B. NEWELL and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 99-2053; Submitted on the Record;
Issued November 27, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On September 21, 1998 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that she sustained headaches and fluttering of the heart in the performance of duty. She attributed her condition to harassment and abuse by her supervisor and submitted a duty status report, dated and signed by a physician on September 21, 1998, diagnosing acute stress and anxiety. Appellant also submitted documents indicating that she had been offered a sedentary position at another job location.

By letter dated October 16, 1998, the Office of Workers' Compensation Programs requested that appellant submit a detailed narrative statement describing how the injury occurred, the names, and addresses of any persons who witnessed her injury or had immediate knowledge of it, a statement describing any prior similar conditions she may have had before the injury, together with the names and addresses of her treating physicians for those conditions, and a medical report giving specific details regarding any reaction she may have had to the claimed incident of September 21, 1998. Appellant did not respond within the 30 days allotted.

In a decision dated November 17, 1998, the Office denied appellant's emotional condition claim on the grounds that she did not submit any evidence in support of her claim and, therefore, did not establish any compensable employment factors. By letter received December 15, 1998, appellant requested a review of the written record and submitted additional evidence as requested by the Office in its October 16, 1998 letter.

In a narrative statement, appellant asserted that on September 21, 1998, she had an unusual amount of mail due to a machine malfunction that had occurred that day. She stated that as soon as she started to work casing mail, her supervisor began to harass her, as she had on several previous occasions, by watching appellant as she cased mail and walking back and forth

the behind appellant's case. Appellant stated that although she was working fast, the actions of her supervisor made her feel that her best efforts were not good enough and further made her feel like a caged animal on display. She began developing a terrible headache.

Appellant stated that her supervisor informed her that her mail was "light" and that she could do the route in eight hours. Appellant stated that as her supervisor continued standing behind her, "watching-watching-watching," she felt like her head was going to explode. Appellant alleged that her mail volume was high, not light, and her route was out of adjustment due to growth. She submitted a request to her supervisor for auxiliary assistance. Her supervisor instead informed her that her request reflected too much time for auxiliary assistance and again instructed appellant to finish her route in eight hours. Appellant stated that she did not feel like arguing with her supervisor, but as she continued to work her headache became worse and her heart began to flutter. Appellant explained that she felt she needed to leave the area or risk something happening. She felt that her supervisor knew nothing about her or her route, yet was treating her like a child.

Appellant stated that she told her supervisor that she had a bad headache and was going to see a doctor, but that as she walked toward the time clock, her supervisor instructed appellant to report to her office and told her that if she "hit the clock" she would be absent without leave (AWOL). Appellant stated that she reported to her supervisor's office, where a clerk supervisor and union representative were also present. Her supervisor then told her that she had a small amount of mail, which appellant felt was not true and reiterated that if she left work, she would be AWOL. Appellant stated that she explained to her supervisor again that she did not feel well and left to go to the doctor.

In a decision dated April 21, 1999, an Office hearing representative found the newly submitted evidence insufficient to establish a compensable factor in the performance of duty. The hearing representative specifically found that the supervisor's actions, watching appellant, denying her request for auxiliary assistance and informing her she would be AWOL if she left the premises, fell within the realm of the supervisor's authority. Absent any proof that her supervisor acted in a malicious or abusive manner in executing her supervisory duties, the events described by appellant could not be considered compensable factors of employment. The hearing representative then specifically noted that appellant failed to provide substantial corroborative evidence of harassment or abusive behavior on the part of her supervisor.

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.¹ An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment;² neither do disciplinary

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Joseph F. McHale*, 45 ECAB 669 (1994).

matters, consisting of counseling sessions, discussions or letters of warning for conduct;³ investigations;⁴ determinations concerning promotions and the work environment;⁵ discussions about an SF-171;⁶ reassignments and denials of requests for transfer;⁷ discussions about the employee's relationship with other supervisors;⁸ or the monitoring of work by a supervisor.⁹ The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.¹⁰

Appellant attributes her condition to the words and actions of her supervisor. To the extent that supervisors or management representatives properly exercised their supervisory or managerial duties and responsibilities, appellant's emotional reaction thereto is not compensable.¹¹ To discharge her burden of proof, appellant must first establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.¹² To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹³ However, for harassment to give rise to a compensable disability under the Federal Employees' Compensation Act,¹⁴ there must be evidence that harassment did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁵

In this case, appellant alleged that her supervisor made statements and engaged in actions which she believed constituted harassment and abusive behavior, but appellant provided no corroborating evidence, to establish that the statements actually were made or that the actions

³ *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁴ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁵ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

⁶ *Lorna R. Strong*, 45 ECAB 470 (1994).

⁷ *James W. Griffin*, 45 ECAB 774 (1994).

⁸ *Raul Campbell*, 45 ECAB 869 (1994).

⁹ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹⁰ *Margreate Lublin*, 44 ECAB 945 (1993).

¹¹ See *Isabel Apostol Gonzales*, 44 ECAB 901 (1993) (holding that the employee's objections to the manner in which the employing establishment carried out administrative functions were not compensable unless the employee established error or abuse by the employing establishment).

¹² *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ 5 U.S.C. §§ 8101-8193.

¹⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

actually occurred. Appellant listed the names of more than a dozen coworkers in response to the Office's request for witnesses to the incident of harassment. However, none of those listed provided statements supporting appellant's allegations of harassment. Nor did appellant offer any evidence of error or abuse on the part of her supervisor. Rather, she described in detail her reactions to her supervisor's monitoring of her work. Such self-generated feelings are not compensable under the Act. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and abuse.¹⁶

The decision of the Office of Workers' Compensation Programs dated April 21, 1999 is hereby affirmed.

Dated, Washington, DC
November 27, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁶ See *William P. George*, 43 ECAB 1159, 1167 (1992).