

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE E. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 99-1346; Submitted on the Record;
Issued October 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

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

The Board finds that appellant did not meet her burden of proof to establish 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 his 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 employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

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 employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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 of Workers' Compensation Programs, 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.⁵ 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.⁶

In November 1997, appellant, then a 52-year-old distribution clerk, filed an occupational disease claim alleging that she sustained an emotional condition as a result of a number of employment incidents and conditions.⁷ Appellant stopped work on November 14, 1997 and returned to work on November 27, 1997. By decision dated March 26, 1998, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. By decision dated and finalized January 21, 1999, an Office hearing representative affirmed the Office's March 26, 1998 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that when she returned to light-duty work on November 12, 1997 after an absence she was harassed by her supervisor, Lewis Leyman. Appellant claimed that Mr. Leyman subjected her to abusive language regarding her limited ability to work, threatened to fire her due to her employment-related physical condition and forced her to work beyond the work restrictions required by her physical condition. She claimed that the following day Mr. Leyman again subjected her to abusive language, unfairly criticized her for not retrieving her own work materials and attempted to force her to work beyond her work restrictions. Appellant alleged that a coworker later belittled her limited ability to work. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.⁸ Moreover, to the extent that disputes and

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ In February 1994, the Office had accepted, under claim number A16-305460, that appellant sustained an employment-related aggravation of adjustment reaction. In connection with her November 1997 claim, appellant alleged new employment factors and, therefore, this claim constitutes a claim for a new employment-related emotional condition rather than a claim for a recurrence of the prior accepted condition. The Office had also accepted, under claim number A16-299112, that appellant sustained employment-related neck and shoulder conditions; appellant was working in a light-duty position at the time of her November 1997 claim.

⁸ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁰

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹¹ Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹² Moreover, appellant did not submit evidence showing that she was forced to work beyond her work restrictions. The record contains statements in which supervisors described how they made accommodations in order to ensure that appellant stayed within her work restrictions. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination and the claim that she was forced to work beyond her work restrictions.

Appellant alleged that, upon her return to work, the employing establishment mishandled the assignment of her work tasks and generally failed to adequately monitor her work activities.¹³ The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁴ Although the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁵ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹² See *William P. George*, 43 ECAB 1159, 1167 (1992). The record contains statements relating to appellant's 1994 claim, but these statements would not be relevant to the present claim.

¹³ She indicated that there was a general air of confusion regarding her work duties and noted that her time card was lost.

¹⁴ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁵ *Id.*

the employing establishment acted reasonably.¹⁶ Appellant did not submit evidence showing that the employing establishment committed error or abuse with respect to assigning her work tasks or monitoring her work activities. Moreover, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁷ Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁸

The decisions of the Office of Workers' Compensation Programs dated and finalized January 21, 1999 and dated March 26, 1998 are affirmed.

Dated, Washington, DC
October 10, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member

¹⁶ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁷ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁸ 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).