U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERRY J. SCHAUB and U.S. POSTAL SERVICE,
POST OFFICE, Toledo, OH

Docket No. 99-2012; Submitted on the Record;
Issued October 12, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On March 27, 1997 appellant, then a 43-year-old letter carrier, filed a claim for a stress reaction and acute depression, causally related to harassment by her supervisor beginning in December 1996. She claimed that harassment by her supervisor, Donald Bockbrader, intensified from February 22 to March 4, 1997 and culminated on March 4, 1997 with her having to stop work and take leave. Appellant returned to work on April 7, 1997 after Mr. Bockbrader was transferred to another facility.

The employing establishment controverted appellant's claim.

Appellant submitted an undated statement and several witness statements. She alleged that in the fall 1996 Mr. Bockbrader talked to her about her performance, told her that she was working at the standard rate, but opined that she could do better. Appellant alleged that on December 10, 1996 Mr. Bockbrader walked with her the whole day while she delivered her route, and that the next day he called her in for a discussion, telling her she was wasting time by getting a drink of water, fueling her vehicle and then talking to one of her elderly customers who asked her in while the customer looked for some change to pay for a postage due letter. She claimed that she was told that she was too friendly with her customers. Appellant also claimed that Mr. Bockbrader made changes in delivery procedures without telling her, which made her less efficient and about which she filed a grievance. She alleged supervisory retribution for filing the grievance. Appellant alleged that on February 22, 1997 Mr. Bockbrader was hiding in his car watching her on her route and that he confronted her, accusing her of refusing to carry an extra bundle off another route, which she indicated that she had not been asked to carry. She alleged that on February 27, 1997 she was questioned about February 22, 1997 and was told that her mail was going to be counted the next day, and that when she told her supervisor that she was also going to count her mail, he became argumentative, which made her uncomfortable and

anxious. Appellant claimed that on March 1, 1997 she was accused of slowing down, and that on March 3, 1997 Mr. Bockbrader and another supervisor were out on her route checking up on her several times. She alleged that this constant scrutiny caused extreme stress. She alleged that she had been singled out and harassed, that Mr. Bockbrader was hostile towards her and accused her of opening mail and that she was told not to open any letter for any reason. Appellant claimed that she had performed her duties for 18 years without problems until these incidents with Mr. Bockbrader began.

By statement dated May 11, 1997, a coworker, Curt Rockwell, opined that appellant was harassed by Mr. Bockbrader. He stated that he had observed Mr. Bockbrader just standing across the room staring at appellant, coming to her route and going through her delivery point sequencing mail, daily being at appellant's case and doing a piece count on her route. Mr. Rockwell noted that another supervisor told him not to talk to appellant or she would be in trouble again.

A May 12, 1997 memorandum from Michael Sughrue, a union steward, stated that at a meeting where he was present, Mr. Bockbrader questioned why appellant was reading mail at her case, which he indicated that he found inappropriate, and was told that appellant was opening correspondence from people on her route with instructions regarding mail delivery, such as during vacations, and therefore was conducting postal business. Mr. Sughrue alleged that Mr. Bockbrader clandestinely observed appellant numerous times on her route, then questioned her at times, claiming that she should have finished her route earlier. He noted that when appellant was informed she was to be given a mail count inspection, he informed her of her right to verify that count, and that when she was confronted with her numbers, she questioned the count, recounted herself, and found that Mr. Bockbrader's numbers were grossly inaccurate. Mr. Sughrue stated that Mr. Bockbrader then adjusted the mail count upward to reflect the verified numbers. He opined that Mr. Bockbrader singled appellant out looking for performance problems.

An undated statement from Mark C. Wulinski, a coworker, noted that it seemed that Mr. Bockbrader spent a lot of time in the section behind "Curt" and appellant, showing up there several times each morning to observe their actions. Mr. Wulinski also stated that it seemed that appellant was taken to Mr. Bockbrader's office a couple of times each week, and would return quite upset.

In a May 12, 1997 statement, Joan M. Dowling, a union steward, noted:

> "I observed Don Bockbrader harassing [appellant], he called her in the office numerous times to give her discussions on what I considered petty things such as putting more than one rubber band on her bundles or going to the restroom too many times, he would stand and stare at her while she worked, making her nervous and unable to do her job. This happened on a daily basis. That was my perception of the whole situation."

Appellant submitted a March 5, 1997 statement from Dr. Mark D. Fine, a Board-certified internist, which noted that he had recommended that she take a one-month leave of absence due to a traumatic stress reaction and acute depression.

By statement dated June 4, 1997, Mr. Bockbrader noted that he talked to all carriers about their performance, that appellant should have refueled her vehicle before beginning her route, that she took 15 minutes to do so, but that this time was not charged against her and that an elderly patron took appellant into her apartment and discussed nonpostal matters leading him to believe that this was an ongoing situation. He opined that going into a customer's apartment was not professional and noted that he changed appellant's delivery pattern, advising her how to proceed. He noted that she took extra time in deadheading and spotting bundles which would have been eliminated with his recommended procedures. Mr. Bockbrader noted that he placed additional qualified delivering point sequencing holdout mail into the delivering point sequencing mailstream which upset appellant, even though she was advised that this would happen. He noted that, according to postal procedures, a carrier can expect to be supervised at any time of the day and that supervision required driving observation. He noted that he had been advised by another supervisor that appellant was asked to pivot but refused, that appellant was ahead in her delivery schedule and would therefore be back in the office early, but that she did not return early. Mr. Bockbrader opined that on February 28, 1997 he did not feel he was argumentative and stated that appellant's mail was counted because a new daily tracking system had identified her as not meeting the standard. He noted that his manager had mandated that two carriers be counted per week, and that appellant was one of those carriers that week. If a carrier did not perform satisfactorily, he was required to find out why and to correct the behavior one reason appellant did not make office time was because she opened and read mail at her case, and that when he brought it to her attention she did not respond well. Mr. Bockbrader noted that appellant left her case frequently to talk with Mr. Rockwell and indicated that his actions were consistent with the responsibility of an employing establishment station manager and that he performed his duties in a professional manner.

By decision dated September 29, 1997, the Office of Workers' Compensation Programs rejected appellant's claim finding that she had failed to establish any compensable factors of her employment. The Office found that appellant had not established specific incidents rising to the level of harassment, and that the incidents she implicated were administrative in nature, or involved personnel procedures or actions and that the evidence was insufficient to establish administrative error or abuse.

By letter dated December 9, 1997, appellant requested reconsideration of the September 29, 1997 decision. She submitted a December 9, 1997 letter from Robert T. Newbold, a branch vice president of the National Association of Letter Carriers (NALC), which cited provisions of the employing establishment management of delivery services handbook and NALC letter of agreement which he felt Mr. Bockbrader violated. Appellant also submitted a February 4, 1997 "grievance resolution and/or withdrawal" which noted that, as an additional portion of appellant's route had been placed in delivering point sequencing, the route should have been requalified in order to ensure a 98 percent quality threshold.

In response, Mr. Bockbrader contended that the NALC letter of agreement was not improperly applied in appellant's case; that supervisors observed letter carriers' behavior at their cases to ascertain whether any time-wasting procedures were occurring; that appellant often left her case and performed time-wasting practices at her case, and that he followed all contractual procedures in performing an office count on appellant. Mr. Bockbrader reiterated that he had

been informed by another supervisor that appellant had refused to carry an extra bundle, that she was capable that day of carrying an extra bundle as she was one hour ahead of her expected time, but that she did not return to the station early.

By decision dated March 9, 1998, the Office denied modification of the September 29, 1997 decision. The Office found that there were disagreements as to interpretation of the management of delivery services handbook, and as to how appellant's work performance was being evaluated, but that there was no probative evidence of administrative error or abuse, particularly as Mr. Bockbrader explained the reasons for the actions taken. Further, the Office found no probative evidence of harassment and noted that appellant's reactions to criticism were self-generated.

By undated letter received by the Office on December 21, 1998, appellant requested reconsideration of the March 9, 1998 decision. She submitted a letter from Mr. Newbold which addressed Mr. Bockbrader's contentions. Attached were excerpts from the management handbook and copies of seven grievances filed. Mr. Bockbader provided a January 30, 1999 response.

On January 30, 1999 Mr. Newbold submitted a response to Mr. Bockbrader's January 30, 1999 statement.

By decision dated March 18, 1999, the Office denied modification of the March 9, 1998 decision. The Office found that no probative factual evidence was submitted to establish that harassment occurred, as alleged. The Office further found that appellant's claim was basically founded on a dispute between appellant and her union representative and an employing establishment official over how he managed or interacted with her.

The Board finds that appellant has failed to establish that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized 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.[1] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

[1] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

the relationship between the diagnosed condition and the specific employment factors identified by appellant.[2]

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.[3] Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.[4] Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."[5]

When working conditions are alleged as factors in causing 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.[6] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[7] When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.[8] If the evidence fails to establish that any compensable factor of employment is implicated in the

[2] *Id.*

[3] *Donna Faye Cardwell*, *supra* note 1, *see also Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Id.*

[5] *See Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

[6] *See Barbara Bush*, 38 ECAB 710 (1987).

[7] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[8] *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

development of the claimant's emotional condition, then the medical evidence of record need not be considered.

Appellant has alleged that she was subjected to supervisory harassment. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.[9] However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.[10] In this case, appellant submitted only opinion evidence from herself, from coworkers, and from union stewards, based upon general perceptions, with no factual evidence corroborating that a specific act that rises to the level of harassment occurred at a specifically identified time and place. The Board, therefore, finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of her harassment allegations. Appellant has the burden of establishing a factual basis for her allegations; however, the allegations here are not supported by specific, reliable, probative and substantial factual evidence and have been refuted by statements from appellant's employer. Accordingly, the Board finds that appellant's allegations of supervisory harassment cannot be considered to be compensable factors of employment.

The remainder of appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,[11] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.[12] Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: appellant's mail count being audited;[13] appellant being monitored;[14] supervisory oversight of appellant's performance;[15] appellant being instructed on how to perform her duties;[16] policy changes;[17]

[9] *Sylvester Blaze*, 42 ECAB 654 (1991).

[10] *Ruthie M. Evans*, *supra* note 8.

[11] 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[12] *See Richard J. Dube*, 42 ECAB 916 (1991).

[13] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Larry J. Thomas*, 44 ECAB 291 (1992); *Jimmy B. Copeland*, 43 ECAB 339 (1991).

[14] *Id.*

[15] *Id.*

[16] *Id.*

appellant receiving poor performance evaluations and/or being subjected to disciplinary or corrective discussions or actions;[18] and general supervisory criticism. Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions, and therefore they are not compensable now under the Act.

As the evidence of record in this case fails to establish that any compensable factor of employment which is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 18, 1999 is hereby affirmed.

Dated, Washington, DC
October 12, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[17] *See David W. Shirey*, 42 ECAB 783 (1991).

[18] *See Thomas D. McEuen*, *supra* note 11; 42 ECAB 783 (1991); *see also Gregory N. Waite*, 46 ECAB 662 (1995); *O. Paul Gregg*, 46 ECAB 624 (1995); *Mary L. Brooks*, 46 ECAB 266 (1994).