

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVE M. ALEXANDER and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Hazelwood, MO

*Docket No. 99-2090; Submitted on the Record;
Issued October 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
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.

The Board has duly reviewed the case record in this appeal and finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On April 8, 1997 appellant, then a 38-year-old mail handler, filed a claim for an occupational disease (Form CA-2) alleging that she first realized that her conditions, which included major depression with anxiety, disturbed sleep and impaired concentration, were caused or aggravated by her employment on June 20, 1996. Appellant's claim was accompanied by factual and medical evidence.

By letter dated June 16, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised appellant to submit additional factual and medical evidence supportive of her claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim. In response, the employing establishment submitted factual and medical evidence by letter dated July 9, 1997. Appellant's July 14, 1997 response letter was accompanied by factual evidence.

By decision dated November 12, 1997, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty. In a letter dated April 10, 1998, appellant requested reconsideration of the Office's decision accompanied by factual and medical evidence.

By decision dated June 5, 1998, the Office denied appellant's request for modification based on a merit review of the claim.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. 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.² 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.³

In this case, appellant has failed to establish a compensable factor of employment under the Act. Initially, appellant alleged in her Form CA-2 that her emotional condition was caused by stress at the employing establishment. In an April 8, 1997 narrative statement, appellant alleged that her work environment at the employing establishment caused her emotional condition. However, no supporting evidence was submitted. Rather, appellant merely made a general allegation without providing specific details about her work environment that caused her emotional condition. Therefore, appellant has failed to establish a compensable employment factor under the Act.

Appellant has also attributed her emotional condition to her reaction to matters involving administrative or personnel actions of the employing establishment. An employee's emotional reaction to an administrative or personnel matter is not generally covered under the Act. Thus, an emotional reaction to matters pertaining to leave is not generally covered under the Act without error or abuse on the part of the employing establishment.⁴ Likewise, an employee's complaint concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the

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

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Daryl R. Davis*, 45 ECAB 907 (1994).

scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.⁵

In her Form CA-2, appellant alleged that her Form CA-2 was not filed within 30 days after June 20, 1996 because she feared retaliation by the employing establishment. Appellant submitted an April 30, 1996 letter of warning issued by the employing establishment indicating that she failed to follow instructions on April 18 and 20, 1996 and to work her assignment on the "SCF Legs." Appellant also submitted a June 4, 1996 letter of warning issued by the employing establishment revealing that she left her work assignment without authorization and failed to follow instructions. Specifically, the letter revealed that on June 1, 1996 appellant failed to perform her work assignment as instructed by her supervisor, Cleatus McConnell, and that she left the premises without authorization after Mr. McConnell denied her request for annual leave. Further, appellant submitted a June 20, 1996 notice of placement in an off-duty status regarding her behavior on that date.⁶

Appellant has alleged in her July 14, 1996 response to the Office's June 16, 1996 letter requesting supportive evidence that the filing of grievances against the employing establishment regarding working conditions caused her emotional condition. These allegations involve administrative matters. There is no evidence of record establishing that the employing establishment committed error or abuse in processing appellant's Form CA-2, and in issuing letters of warning and a notice of placement in an off-duty status. Thus, appellant has failed to establish a compensable factor of employment.

In her July 14, 1996 response letter, appellant has alleged that the employing establishment's denial of her request for a detail assignment on June 17, 1996 and her application for a position located in Arkansas so that she could avoid the commute to take care of her parents' physical disabilities caused her emotional condition. Appellant filed grievances regarding the employing establishment's denial of her request for a detail assignment and a higher level position.

The Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.⁷ Further, appellant's filing of a grievance regarding the employing establishment's denial of her request

⁵ *Abe E. Scott*, 45 ECAB 164 (1993).

⁶ The record reveals that on June 20, 1996, Vanessa M. Lucas, an employing establishment manager, recommended that appellant undergo medical treatment because of her conduct/behavior problems which were affecting her work performance. Ms. Lucas agreed to pay appellant approximately two and one-half hours of higher level for the time in question, but only when she returned to work with acceptable medical documentation stating that she was capable of performing her job. On that date, Ms. Lucas and Mr. McConnell reminded appellant that the local memorandum with the union stated that as the senior qualified sack keyer, she had to perform the job. When appellant refused to perform the work, they asked her for a written request to remove her name from the volunteer sack keyer list, which she refused.

⁷ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

for a detail position and a higher level position involves an administrative matter.⁸ A May 20, 1996 decision indicating a settlement agreement between the employing establishment and the union does not establish that the employing establishment committed error or abuse in denying appellant's request for a higher level position. A July 16, 1996 settlement agreement did not find that the employing establishment committed error or abuse in denying appellant's request for a detail assignment. Thus, appellant has failed to establish a compensable factor of employment under the Act.

Appellant has further alleged in her response letter that she was harassed and discriminated against by Mr. McConnell in the work environment. Appellant submitted grievances that she filed regarding this matter. With respect to an allegation of harassment, there is no evidence supporting a finding of harassment in this case.⁹ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.¹⁰ In addition, appellant's filing of a grievance regarding this matter involves an administrative or personnel matter.¹¹ Inasmuch as appellant has failed to establish that the employing establishment committed error or abuse in handling this matter, she has not established a compensable factor of employment.

Appellant has not provided the specific information necessary to determine whether the incidents of employment to which she attributed her emotional condition occurred as alleged and constituted compensable factors of employment. She, therefore, has not established that she sustained an emotional condition in the performance of duty. In view of this decision, it is unnecessary to consider the medical evidence to determine whether appellant's emotional condition was causally related to compensable factors of her employment. Such factors must be identified and established before it can be determined, through medical evidence, whether a claimant's disability is causally related to such factors.

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

⁹ A claimant must establish a factual basis for a claim of harassment by supporting the allegations with probative and reliable evidence. *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁰ *Helen P. Allen*, 47 ECAB 141 (1995).

¹¹ *Diane C. Bernard*, *supra* note 8.

The June 5, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member