

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARLENE M. KENNARD and U.S. POSTAL SERVICE,
EDISON SQUARE POST OFFICE, Waukegan, IL

*Docket No. 00-1432; Submitted on the Record;
Issued April 13, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On September 29, 1998 appellant, then a 33-year-old window clerk, filed a notice of occupational disease alleging that she suffered from stress, frustration, depression and headaches as a result of an incident on September 24, 1998 when a manager asked her how long she had been on break and then insisted that she return to her duty station. Appellant was off work from September 25 through 28, 1998.

In an October 2, 1998 statement, appellant noted that she was transferred to the Waukegan Post Office in July 1996 after she won an Equal Employment Opportunity (EEO) complaint.¹ She was forced to take a window clerk position and had to go back to school to train for the position, because no one else would bid on the job and she was an unassigned regular employee. Appellant stated that the "black employees are constantly harassed, terminated, watched, spied upon, treated badly and given discipline weekly as well. While the white employees are given chances, treated fair, given breaks, left alone and are able to get away with little (usually 1 to 2 months) discipline or none at all." Appellant related that on September 24, 1998 she "lost it" when she was approached by her manager, Becky Sikora, and a heated argument ensued. She alleged that she was in fear of bodily harm because Ms. Sikora "got up from her desk and walked straight to me."

¹ Appellant also submitted copies of numerous documents concerning a grievance she filed against the employing establishment for its failure to grant a transfer request.

In a September 29, 1998 letter of suspension for conduct unbecoming a postal employee, Ms. Sikora made the following statements with regard to the incident of September 24, 1998 between herself and appellant:

“On Thursday, September 24, 1998, at approximately 4:45 p.m., I approached you while you were on break and advised you that I needed for you to return to the window, as I needed to complete advanced deposits and you had been away from the window for approx[imately] 15 minutes or more. We discussed break policy and you were advised to return to the window. You got up from the table and walked away. I assumed you were returning to the window as instructed.”

“A few minutes later, your husband/Union Steward, Raymond Kennard, came to speak with me in my office. He was standing in front of me at my desk and the door was open. As we were discussing breaks and why you were told to return to the window, I heard screaming and yelling outside of my office. Shortly after that, you appeared at the door still screaming and yelling. [Mr. Kennard] was talking louder and louder to be heard over your screaming. I told you to lower your voice. You continued screaming and yelling. I told you I [am] giving you a direct order to stop yelling, right now! You walked away from my office door and continued screaming, yelling and waving your arms. I repeatedly asked that you be quiet and step into the office if you wanted to discuss this. [Mr. Kennard] kept yelling ‘[Darlene, Darlene]’ in an attempt to get you to stop. Finally, I told you that you were approaching what I would consider to be violence in the workplace. [Mr. Kennard] advised you to call EAP and go on stress leave. You finally stopped screaming and yelling.”

In a March 8, 1998 decision, the Office of Workers’ Compensation Programs denied compensation on the grounds that appellant failed to allege a compensable factor of employment.

In a March 22, 1999 statement, appellant related that after working at Waukegan Post Office for ten months she was falsely charged with forgery and was terminated for falsifying a medical document. After she won an arbitration, appellant was reinstated in her job in March 1998. She related that management retaliated against her by denying her breaks and watching her all day long while “all of the other (white) clerks would take their breaks, goof off, make mistakes or slack off on doing their work.” Appellant alleged that she never received a verbal warning for her mistakes, only letters of warning and notices of suspension.

By letter dated October 30, 1999, appellant introduced additional evidence which included the following: request for transfer to the Waukegan office in November 1994, two notices of suspension for failure to follow instructions dated April 12 and March 30, 1999, a letter of warning dated August 6, 1998 for failure to follow instructions, a letter of removal dated April 4, 1997 for submission of falsified medical information in support of leave, a notice of suspension dated September 29, 1998 for conduct unbecoming a postal employee, a letter of warning dated May 20, 1998 for failure to perform duties properly and a letter of demand dated August 6, 1998 for a shortage in the amount of \$95.31 that was found in her flexible credit.

In a November 1, 1999 statement, appellant alleged that she was denied the use of 16 hours of sick leave due to stress and instead was charged with 16 hours of leave without pay. She stated: “[Ms. Sikora] refused to pay me for the workers’ comp[ensation], visiting my doctor,” including travel expenses for a doctor’s visit. Appellant also related that she was placed on restricted sick leave for “call-ins” and for excessive absences on Friday.

In a decision dated January 18, 2000, an Office hearing representative determined that appellant failed to establish that she sustained an emotional condition while in the performance of duty.

The Board finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of his employment.² This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition for which he or she claims compensation.³ This burden also includes the submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of appellant, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of her federal employment.⁴

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 employment and have some kind of causal connection with it but nevertheless are not covered because they are not found 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 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 coverage of the Federal Employees’ Compensation Act.⁵

Appellant alleged that she was harassed by her manager with regard to the length of her break on September 24, 1998. She also attributed her emotional condition to having received numerous notices of suspension for her conduct on the job. While appellant’s manager, Ms. Sikora, acknowledges that she told appellant to come off of her break on September 24, 1998, she stated that it was necessary so that advance deposits could be completed. She

² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

³ *See generally* 20 C.F.R. § 10.115-116 (1999).

⁴ *See Ruth C. Borden*, 43 ECAB 146 (1991).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

specifically denied having singled appellant out for harassment or retaliation. Ms. Sikora further noted that appellant's reaction to having had her break cut short was to scream and yell in an area where she could be heard by the customers.

The Board notes that the allocation of breaks, the use of sick leave and the monitoring of work assignments involve matters that are administrative in nature and do not involve an employee's regular or specially assigned work duties. As such, these matters are not considered to be employment factors.⁶ An administrative or personnel matter will only be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.

The Board finds that Ms. Sikora did not act abusively in her interaction with appellant on September 24, 1998 or that she was unjustified in issuing disciplinary letters to appellant for such matters as failure to follow instructions and perform postal duties properly. The record contains no factual evidence of error by Ms. Sikora in placing appellant on restricted sick leave, particularly since the employing establishment noticed a pattern of appellant taking off from work on Fridays. Appellant's perception that she was being harassed and pressured by management is without sufficient factual support.

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, abusive. This recognizes that supervisors or management in general must be allowed to perform their duties and that, in the performance of such duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisor or management action will not be compensable without showing through supportive evidence that the incidents or actions complained of were unreasonable.

Appellant has alleged harassment in the workplace but she has not substantiated her claim with factual evidence.⁷ Consequently, the Board finds that appellant has failed to allege a compensable factor of employment. Based on the Board's ruling, it is not necessary to address the medical evidence.

⁶ *Patricia English*, 49 ECAB 532 (1998).

⁷ Appellant filed a union grievance but there was not a final decision by an appropriate agency as to whether appellant was harassed. Grievances and EEO complaints, by themselves, do not establish workplace harassment or unfair treatment; see *Constance I. Galbreath*, 49 ECAB 401 (1998).

The January 18, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 13, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member