

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE JOHNSON and U.S. POSTAL SERVICE,
INSPECTION SERVICE OPERATION SUPPORT GROUP, Memphis, TN

*Docket No. 00-1479; Submitted on the Record;
Issued August 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On October 16, 1998 appellant, then a 45-year-old operation support specialist, filed an occupational disease claim (Form CA-2), alleging that on December 31, 1997 she first realized that her anxiety was due to work stress.¹ Appellant made various allegations regarding name calling, harassment, discrimination, lack of promotion and denial of training. Specifically, she alleged that in 1983 she was called an "Aunt Jemima;" was written up in 1983 for harassing telephone calls based on a call from a friend's husband during the time the friend was experiencing marital difficulties; she was not awarded any of the open jobs during the period December 1997 through March 1998 due to disparate treatment and harassment; verbal abuse by coworkers in December 1997; a verbal assault by Carolyn Green, a coworker, on March 4, 1998; Judy J. Goden, a supervisor, snapped her fingers at appellant and told her to go faster on March 4, 1998; J.W. Birch, a supervisor, cursed at appellant in late March or early April, 1998; Ms. Goden did not allow her time to process her Federal Employees' Compensation Act claim and thus denied her due process; Ms. Goden told appellant to "get out of my face" when appellant persisted in requesting forms to file her claim; on June 16, 1998 she was written up for using a computer by Mary Sims, a supervisor; on July 7, 1998 Ms. Goden tried to force her to move faster, intimidated her and threatened that she would be fired; Captain Joseph J. Magilton, acting manager, questioned appellant about her arm injury on September 15, 1998; she was required to use sick leave on September 27, 1998 for a therapy appointment; she received inadequate training; she was made to work by herself in the mail room and told the mail room would be her retirement; she was not allowed to do investigations and told to do filing, she was forced to perform manual labor; another employee rubbed her rear on an unspecified date; and her requests for promotion and training were denied.

¹ Appellant had previously filed a traumatic injury claim, which the Office of Workers' Compensation Programs accepted for epicondylitis of the right elbow and assigned claim No. 06-0631842.

In a progress notes dated August 4, 1994, Dr. Wilson Palmer, appellant's attending physician, diagnosed situational depression and noted appellant's complaints of "increasing problems with depression related to her job situation."

In a treatment note dated February 27, 1998, Dr. Felecia Williams indicated that appellant stated she was experiencing a lot of stress at work and diagnosed stress. Dr. Williams also noted that appellant was attending counseling at work for her stress.

In progress notes dated June 13 and 18, 1998, Dr. Tejinder Saini noted that appellant continued to report her feelings of discrimination and harassment by her supervisors at work. On June 13, 1998 Dr. Saini indicated that appellant had "an element of paranoia, but without collaborative data it is difficult to ascertain if there is a delusional element to this."

In a treatment note dated June 26, 1998, Dr. Palmer diagnosed temporal headaches, history of depression, chronic dysphagia and chronic extensive tendinitis in the right elbow. He noted that appellant had "a good many problems at work with supervisors and coworkers" as well as complaints pending with the [Equal Employment Opportunity Commission] and other similar organizations."

In an October 9, 1998 letter, Captain Magilton denied appellant's allegations regarding harassment, that he violated her medical restrictions or did not assist her in completing her compensation forms because he was too busy. Captain Magilton also noted that the mail room incident with Ms. Goden who informed him that the incident had been looked into and that it was deemed to be a "she said/she said incident from which no positive conclusion could be drawn." However, due to appellant's allegation Ms. Goden indicated that Ms. Sims' work assignment was changed and that "[T]hey did monitor the future interaction of the two employees which did not produce any significant findings."

The record contains a copy of a November 2, 1998 EEO report based on appellant's allegations of discrimination based upon age, sex and color, retaliation for filing a previous complaint, that appellant was subjected to name calling and she was not given training at the same time a younger female was provided with training.

In a letter dated October 23, 1998, the employing establishment noted the allegation, that Ms. Sims and Ms. Green, coworkers, were rude to her, said demeaning things to her, harassed her and threatened assault. The employing establishment noted that an investigation was performed and that the results were inconclusive so no charges or findings were issued.

By letter dated October 21, 1999, the Office advised appellant that the evidence of record was insufficient to establish her claim and advised her to provide additional signed witness statements to corroborate her story as well as a detailed medical report. The Office also advised the employing establishment of appellant's allegations and requested a response.

By letter dated November 19, 1999, the employing establishment responded to the Office's request and submitted responses from her supervisors denying appellant's various allegations.

By decision dated February 10, 2000, the Office denied appellant's claim on the basis that she failed to establish any compensable factor.

The Board finds that appellant has 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 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 Act.² 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.³

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.⁴ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

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, 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 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.⁷

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated February 10, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any

² *Dinna M. Ramirez*, 48 ECAB 308 (1997); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

³ *Michael Ewanichak*, 48 ECAB 364 (1997); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

compensable employment factors. 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 harassment and discrimination by her supervisor and coworkers caused her stress-related condition. Actions of an employee's supervisor or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable factor of disability under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ 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.⁹ However, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur.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 coworkers called her names and made derogatory statements to her and her supervisors 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 Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.¹³ In *Antal*, a tax examiner filed a claim alleging that her emotional condition was caused by the pressures of trying to meet the production standards of her job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines. Appellant has submitted no documentation to support that she was overworked. Thus, appellant has not established a compensable employment factor under the Act with respect to the overwork.

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

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

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).

¹³ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

Regarding appellant's allegation of denial of promotions and failure to be awarded any of the open jobs, 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 his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹⁴ The appellant has not submitted any evidence to show there was any error or abuse to support her allegations regarding the employing establishment's failure to award her any of the open jobs she applied for. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has alleged that the employing establishment wrongfully failed to promote her while promoting younger people the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.¹⁵

An altercation between coworkers which arose out of a claimant's regularly or specially assigned duties would be considered an employment factor, but an altercation which arose out of nonemployment factors, *i.e.*, a purely personal dispute, would not be considered an employment factor.¹⁶ In the instant case, the record contains evidence that appellant submitted a written complaint regarding an altercation between her and Ms. Sims in December 1997. This incident was investigated by the employing establishment, which found there was conclusive evidence and that the situation was one of "she said/she said."

Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the work place will give rise to coverage under the Act.¹⁷ In the instant case, appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act nor has she submitted any witness statements to support any verbal abuse.¹⁸

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 he sustained an emotional condition in the performance of duty.¹⁹

¹⁴ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹⁵ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹⁶ *See Irene Bouldin*, 41 ECAB 506, 514 (1990); *Lester O. Rich*, 32 ECAB 1178, 1180 (1981).

¹⁷ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

¹⁸ *Compare, Alfred Arts*, 45 ECAB 530, 543-44 (1994) and *Abe E. Scott*, 45 ECAB 164, 173 (1993).

¹⁹ 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).

The February 10, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 9, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member