

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHERINE E. GILL and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, VA

*Docket No. 01-227; Submitted on the Record;
Issued August 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On July 1, 2000 appellant, then a 31-year-old city carrier, filed a claim for a traumatic injury alleging that she was subject to verbal harassment at work which was an ongoing problem that she had discussed repeatedly with the postmaster, and which caused her high blood pressure. Appellant stopped working on July 3, 2000.

In a statement dated August 3, 2000, appellant stated that a few months earlier she withdrew her name from the overtime list and her supervisor, Gerry Burke, had to pick up the overtime and "put it to someone else." Appellant stated that it became "a real problem" and she was "harassed nearly every day" following her withdrawal from the overtime list. Appellant stated that on more than one occasion she went to the postmaster because Mr. Burke reprimanded her without offering her a shop steward in violation of the labor act.

Appellant addressed an incident which occurred three weeks before July 18, 2000 where she needed 15 minutes of overtime and because Mr. Burke was not around, she asked another supervisor, Mike. Appellant stated that later that day Mr. Burke came out to her route and blocked her mail truck in such a way as to frighten the customer with whom she was talking. Appellant stated that Mr. Burke told her that she did not need the extra 15 minutes of overtime and that she was "not doing her job." She asked Mr. Burke to move his truck so she could do her job and he said no, and then kept asking her why she needed 15 minutes of overtime, to which she replied that she did not feel good and would like him to leave. Mr. Burke then did move his truck, but appellant was very upset and when she got back to the office she was crying. Appellant said she told the postmaster, Bernie Nicholson, what happened and he said what Mr. Burke did was wrong and he would discuss the matter with Mr. Burke.

Appellant stated that every day there were arguments about her overtime even though she only asked for it when she needed it. Appellant stated that on July 1, 2000 when she asked

Mr. Burke if she could attend her son's last ball game and not use overtime but work a half hour later, he told her that she was not a good carrier and was not doing her job well. She asked him just to answer the question but he reiterated that he and Mr. Nicholson did not think she was a good worker.

Appellant asked for forms to go to the doctor and Mr. Burke said he would go with her to the doctor but in the end he did not show up. Appellant stated that she took two weeks off per her doctor's suggestion and returned to work on July 18, 2000. Appellant stated that, soon after she returned to work, there was a group discussion with Mr. Burke on treating people with respect and dignity, and since that discussion Mr. Burke treated her respectfully.

Appellant also stated that, on the day Mr. Burke blocked her mail truck, he approached her in the office, opened her paycheck, looked it over, and said, "You [a]re running out of leave, ain't ya."

In a statement dated July 3, 2000, Mr. Burke stated that, on June 29, 2000, appellant submitted a leave request, Form 3971, for annual leave from July 10 through 15, 2000, although the maximum hours carriers were allowed off were eight hours. He stated that he disapproved her leave slip, but she told an acting supervisor that she had made a deposit and already had plans to go, and that after seeing the doctor she was placed off duty until July 14, 2000 which is when the time period of the annual leave she requested ended. He found that on June 30, 2000 appellant asked for too much assistance. Mr. Burke stated that what appellant called harassment was his performing his role as supervisor to make sure carriers on the street were performing their duties in a safe and efficient manner. He stated that the postmaster talked to him about treating all carriers equally and with dignity and respect and he tried to treat appellant as he did all carriers in his zone.

Appellant submitted a medical report dated July 1, 2000 with the initials, "CH," apparently from her treating physician, Dr. Cynthia Horner, in which she diagnosed stress with elevated blood pressure but did not address causation.

By letter dated August 25, 2000, the Office of Workers' Compensation Programs informed appellant that additional evidence was necessary to establish her claim including a narrative report from her treating physician addressing how her disability was caused by her injury.

By decision dated September 30, 2000, the Office denied appellant's claim, stating that she did not meet the requirements for establishing that she sustained an injury as alleged.

The Board finds that the Office properly found that appellant has not met 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 her 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.³ The issue is not whether the claimant has established harassment or discrimination under standards applied the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁴ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁵

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁶ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁷

In this case, appellant alleged that her supervisor, Mr. Burke, began harassing her on a daily basis approximately in June 2000 when she asked to be removed from the overtime list which meant Mr. Burke or another coworker had to pick up the overtime. Appellant alleged that on one particular day, when she had asked for 15 minutes of overtime, Mr. Burke blocked her mail truck and repeatedly asked her why she wanted overtime. Appellant also alleged that on the same morning Mr. Burke blocked her mail truck, he opened her check in the office, told her that she was running out of leave and threw the check on her desk. Appellant contended that the incidents of harassment caused her blood pressure to rise, for which she took two weeks off from work. Appellant stated that, upon her return, after a group discussion with Mr. Burke, he treated her respectfully.

Mr. Burke stated that, when he encountered appellant on her street duty, he was merely performing his supervisory duty of making sure the carriers were working safely and efficiently and that he treated appellant with the same dignity and respect he treated the other carriers.

¹ 5 U.S.C. §§ 8101-8193.

² *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

³ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁴ See *Martha L. Cook*, 47 ECAB 226, 231 (1995).

⁵ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁶ *Clara T. Noga*, *supra* note 2 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁷ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

Appellant has not presented corroborating evidence that some day in June, Mr. Burke blocked her truck and repeatedly interrogated her about her overtime. She did not present evidence to corroborate that he opened her paycheck in her presence and remarked on her leave. Nor did appellant present corroborating evidence that Mr. Burke made negative comments to her about her work performance when she asked for time off to attend her son's baseball game. To the extent Mr. Burke monitored appellant's performance in the street, that is an administrative function and as such is not compensable unless appellant shows that Mr. Burke acted unreasonably or abusively.⁸ Appellant has not made this showing. Although the Office informed appellant of the evidence she must submit to establish her claim, appellant did not submit the requisite evidence. She therefore failed to establish her emotional claim.⁹

The decision of the Office of Workers' Compensation Programs dated September 30, 2000 is affirmed.

Dated, Washington, DC
August 29, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Daryl R. Davis*, 45 ECAB 907, 911 (1994).

⁹ Since appellant did not establish any compensable factors of employment, it is not necessary to address the medical evidence. See *Diane C. Bernard*, 45 ECAB 223, 228 (1993).