

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUSTINA O. INGRAM and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Greensboro, NC

*Docket No. 01-449; Submitted on the Record;
Issued August 27, 2001*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained an emotional condition causally related to compensable work factors.

On April 5, 1999 appellant, then a 38-year-old clerk, filed a claim alleging that her chronic depression was causally related to her federal employment. By decision dated November 4, 1999, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established any compensable work factors. In a decision dated September 6, 2000, an Office hearing representative affirmed the prior decision.

The Board finds that appellant has not established an emotional condition causally related to compensable work factors.

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.¹ 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.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 coverage of workers' compensation. These injuries occur in the course of the employment and have some

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

kind of causal connection with it but nevertheless are not covered because they are found not 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 her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

In the September 6, 2000 decision, the Office hearing representative provides a detailed description of the factual allegations made by appellant in this case. In summary, appellant alleged: (1) error or abuse by her supervisor in administrative actions, including disciplinary actions on February 23 and 25, 1999, denial of leave, and monitoring of her work; and (2) verbal harassment by her supervisor.

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵ Unsupported allegations of error or abuse are not sufficient to establish a compensable factor of employment.⁶

The record indicates that, on April 1, 1999, appellant received a letter of warning for failure to follow instructions on February 23, 1999. Appellant also was temporarily placed in an off duty status on February 23, 1999. On February 25, 1999 appellant received written notice that she was placed in an off duty status for failure to follow instructions on that date. There is, however, no probative evidence establishing error or abuse in the disciplinary actions taken. With respect to the February 23, 1999 incident, appellant filed a grievance and the record contains a settlement agreement dated April 29, 1999, indicating that the letter of warning would be reduced to an official discussion. There is no admission or acknowledgment of error by the employing establishment, and the mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.⁷ With respect to the February 25, 1999 incident, an April 16, 1999 agreement indicates that appellant would be granted 1.50 hours of pay on February 25, 1999. There is no finding or admission of error, nor any language that establishes error or abuse by the employing establishment. Similarly, there is no probative evidence of error or abuse regarding other administrative actions taken, such as monitoring of work, denial of leave and job assignments. In the absence of reliable evidence, appellant has not

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *See Harriet J. Landry*, 47 ECAB 543, 547 (1996); *Martin Standel*, 47 ECAB 306, 308 (1996).

⁷ *See Michael Thomas Plante*, *supra* note 5; *Richard J. Dube*, *supra* note 4 (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

met her burden of proof to establish a compensable work factor with respect to administrative actions by her supervisor.

The remaining allegations generally involve verbal harassment by appellant's supervisor. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁹

The record does not contain any findings by the Equal Employment Opportunity Commission of harassment, or other probative evidence of harassment in this case. The witness' statements of record do not establish a pattern of verbal harassment by appellant's supervisor. In the absence of probative evidence, the Board finds that appellant has not established a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁰

The decision of the Office of Workers' Compensation Programs dated September 6, 2000 is affirmed.

Dated, Washington, DC
August 27, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁹ *Helen P. Allen*, 47 ECAB 141 (1995).

¹⁰ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).