

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIOUS J. PIERRE and U.S. POSTAL SERVICE,
TERMINAL ANNEX, Seattle, WA

*Docket No. 00-839; Submitted on the Record;
Issued February 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

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

On September 25, 1996 appellant, then a 52-year-old distribution clerk, filed a claim for an occupational disease alleging that on August 25, 1996 she first became aware of her stress.

By decision dated November 8, 1996, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an emotional condition caused by compensable factors of her employment. In a December 6, 1996 letter, appellant requested an oral hearing before an Office representative.

In a February 25, 1998 decision, the hearing representative found appellant's allegation that she was required by the employing establishment to work outside her physical limitations due to a 1988 employment injury of plantar fascia fibromatosis from September through October 1995 constituted a compensable factor of her employment.¹ The hearing representative, found, however, that the medical evidence of record was insufficient to establish that appellant's emotional condition was caused by the accepted factor of employment. Accordingly, the hearing representative affirmed the Office's decision. In a February 18, 1999 letter, appellant, through her counsel, requested reconsideration of the hearing representative's decision and submitted by medical evidence.

¹ The record reveals that prior to the instant claim, appellant filed a claim assigned number A14-0232751 for a foot injury, which she sustained on April 21, 1988. This claim was accepted for plantar fascia fibromatosis.

By decision dated June 8, 1999, the Office denied appellant's request for modification based on a merit review.

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.²

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.³ 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.⁴

In the present case, the Office properly determined that appellant was required to work outside her physical requirements by the employing establishment from September through October 1995. The Board concurs with the Office's finding that this allegation was substantiated by the factual evidence of record and relates to the performance of appellant's assigned duties.

Appellant has also alleged that in September 1995 she was reassigned from a "rehab[ilitation] clerk" position to a manual clerk position. She alleged that the managers at her new worksite wanted to know who she was and why she was being sent to their work unit. Appellant contended that she was reassigned from "manual cashing" to answering telephones after the union intervened because she was not physically capable of performing the duties of the former position. Appellant contended that on April 15, 1996 she was notified to report to the postmaster's office the following morning for a meeting with three employing establishment managers and there was no union representative available to accompany her to the meeting. Appellant stated that she experienced stress in filing complaints with the Equal Employment Opportunity Commission (EEOC).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

The reassignment of an employee to a different position,⁵ denial of union representation⁶ and the filing of a complaint⁷ constitute administrative or personnel matters which do not constitute compensable factors of employment absent evidence of error or abuse. Regarding the filing of her complaints with the EEOC, appellant stated that she was not aware of a final decision. Appellant has not submitted evidence establishing error or abuse by the employing establishment in handling this matter. In addition, appellant has not submitted evidence of error or abuse by the employing establishment in handling the other administrative actions. Therefore, appellant has not established a compensable factor of employment under the Act.

Appellant has not substantiated her allegations of a general pattern of harassment or retaliation. Actions of an employee's supervisor, which the employee characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.⁸ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁹ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.¹⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.¹¹ The Board finds that appellant has not submitted any evidence in support of her allegations to establish harassment.

As the Office accepted that appellant established a compensable factor of employment, the Board will evaluate whether the medical evidence substantiates that appellant's emotional condition was causally related to this accepted compensable factor of employment.

Appellant submitted medical reports addressing the cause of her emotional condition. In a September 1996 medical report, Dr. Charles W. Freeman, a clinical psychologist, noted his treatment and a history of appellant's foot pain stemming from 1984, which was confirmed in 1988. Dr. Freeman noted appellant's EEOC complaints and reassignments, which involved administrative matters. He opined that appellant was showing multiple signs of stress and depression. Dr. Freeman further opined that appellant's recent hospitalization with physical complaints might be stress related. He diagnosed mood disorder related to chronic and acute foot pain that was causally related to appellant's employment injury. In further support of her claim, appellant submitted Dr. Freeman's October 1996 medical report revealing that she was receiving treatment for her mood disorder, which was a result of chronic and acute foot pain

⁵ *James W. Griffin*, 45 ECAB 774 (1994).

⁶ *See Larry D. Passalacqua*, 32 ECAB 1859 (1981).

⁷ *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

⁸ *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁹ *See Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁰ *William P. George*, 43 ECAB 1159 (1992).

¹¹ *See Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

caused by her employment injury. He opined that appellant's depression was the result of the pain she experienced and the profound effect of the pain on her lifestyle vocationally, avocationally, socially and financially. Additionally, appellant submitted Dr. Freeman's September 23, 1997 medical report indicating that she was restricted by her physician to standing intermittently on her feet for no more than one to two hours per day. He noted that appellant was placed in a job, which required her to stand five to six hours per day for approximately two months. Dr. Freeman opined that this caused a marked increase in appellant's foot pain, which affected her quality of life in and outside of work. He further opined that as a result appellant developed a mood disorder and experienced increased stress. Dr. Freeman noted that appellant was undergoing medical treatment for this mood disorder.

Appellant also submitted an October 2, 1997 medical report of Dr. H. James Gorey, a podiatrist, indicating that she continued to have problems with her foot, which was due, in part, to her work-related condition. He noted appellant's medical treatment, including surgery on her heel and his recommendation that appellant not be on her feet for more than two hours per day in 15 to 30 minute periods. Dr. Gorey opined that it was very likely that someone who was forced to be in pain for years would have stress. He further opined that it was physically and emotionally draining to have daily pain. Dr. Gorey stated that since appellant's surgery on her heel, which the Board notes took place in 1991, she had no pain in the heel, but other problem areas remained.

Although, Drs. Freeman and Gorey attributed appellant's emotional condition to her original accepted employment injury, a compensable factor of employment, they failed to provide sufficient medical rationale explaining how or why appellant's emotional condition was caused by the April 1988 employment injury. Further, Drs. Freeman and Gorey did not explain how or why working outside her physical restrictions caused appellant's emotional condition. Therefore, the reports of Drs. Freeman and Gorey do not satisfy appellant's burden of proof.

As appellant has failed to submit the necessary medical opinion evidence to establish a causal relationship between her compensable factors of employment which included her accepted condition of plantar fascia fibromatosis and being required to work outside her physical restrictions and her emotional condition, she has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The June 8, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 8, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member