

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRY L. PIERCE and U.S. POSTAL SERVICE,
POST OFFICE, Perrysburg, OH

*Docket No. 00-1365; Submitted on the Record;
Issued July 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

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

On June 24, 1999 appellant, then a 37-year-old letter carrier, filed a claim for emotional stress which she attributed to factors of her federal employment. Specifically, appellant related that she developed headaches, sleeplessness, anxiety, irritability and depression, as a result of harassing, threatening and demeaning comments from her coworkers. Appellant stopped work on May 25, 1999 and returned to work on July 6, 1999.

By decision dated September 13, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish any compensable factors of employment. In a decision dated January 14, 2000, the Office denied modification of the prior decision.

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 Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 5 U.S.C. §§ 8101-8193.

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

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.³ 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.⁴

In this case, the basis of appellant's claim is that in April 1999 she was transferred from a rehabilitation position at the Toledo Main Post Office to a position at the Perrysburg Post Office, where she was subjected to threatening and demeaning comments from her coworkers, who were concerned that appellant's arrival would compromise their seniority rankings. Several of appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions.

In *Thomas D. McEuen*,⁵ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁶ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment related.

The incidents and allegations that fall into the category of administrative or personnel actions include: appellant's April 1999 transfer from a rehabilitation position at the Toledo Main Post Office to a modified letter carrier position at her prior location, the Perrysburg Post Office; and her May 1999 reassignment from a clerk to a carrier.

Appellant specifically stated that her emotional condition did not concern her actual duties and that even after her transfer, all work remained within her physical restrictions.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *Id.*

⁵ See *Thomas D. McEuen* *supra* note 2.

⁶ See *Richard J. Dube*, 42 ECAB 916 (1991).

Although appellant initially asserted that she was transferred because Jesse Brown, manager of human resources, did not approve of rehabilitation employees, she clarified that this sentiment was not directed at her and that Mr. Brown did not even know she was a rehabilitation employee when the comment was made. While appellant submitted evidence that an Equal Employment Opportunity Commission complaint was settled in her favor, allowing her to return to the Toledo office, the settlement agreement specifically stated that it was not as an admission of discrimination or wrongdoing by the employing establishment. Appellant has presented no evidence of administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

Appellant predominately attributes her emotional condition to harassment by coworkers. Appellant asserted that on April 19, 1999, the day she returned to the Perrysburg office, she was warned by custodian Mary Jane Thomas that the other carriers at Perrysburg were openly angry that appellant was returning and were concerned about how their seniority would be impacted. Appellant stated that during her first day she was blatantly ignored, given dirty looks and asked who she planned to sleep with to obtain her next cushy job. Appellant alleged that the following day, April 20, 1999, she was told by coworker Kevin Syph that she “should watch her back,” as the carriers were “out to get” her.

Appellant stated that the general feelings of discontent and anger on the part of the other carriers were confirmed by a union representative who also advised her to check under her car before leaving. Appellant stated that when she complained to management about these threats, they did not seem overly concerned, but did offer to speak to the other carriers about the situation. Appellant stated that she declined this offer because she felt it would only make matters worse and she preferred to see if things would calm down on their own first.

Appellant also asserted that several heated arguments broke out among the clerks working near her, the subject of which was the unfairness of appellant’s return to Perrysburg and its possible negative ramifications. Appellant stated that Brent Dhondt, Fred Williams, Judi Clapper, Ed Rogers and Mr. Syph were mainly involved in these arguments.

Appellant alleged that on May 17, 1999 carrier Chris Meyers harassed her about being a clerk/carrier, stating that she was not doing any work and that she would soon develop a “secretary’s butt” from just sitting around doing nothing. Appellant added that there were two witnesses to this exchange, but that usually there were no witnesses because the other employees were mindful that they could be fired for harassment and exercised caution. Finally, appellant alleged that on May 20, 1999, after speaking to a union representative about filing a grievance, she was told by another carrier that the union representative had told all the carriers the subject of her complaint.

In response to appellant’s claim, the employing establishment submitted a statement from Michael K. Nagel, the officer-in-charge at Perrysburg. Mr. Nagel confirmed that within a few days of her return to Perrysburg, appellant told him that some of the employees were making comments to her or about her that she perceived to be threatening or derogatory. He told appellant that if she would give him the names of those involved, he would see that this behavior stopped immediately, but she declined, stating that she did not want to cause any more trouble.

Mr. Nagel stated that he did advise appellant's immediate supervisor to conduct a service talk with all the employees about harassment.

In support of her allegations of harassment on the part of coworkers, appellant submitted only a signed witness statement from coworker Mr. Syph, who stated:

“This statement is written in support of [appellant's] claim of harassment while working at the Perrysburg Post Office from [April 19 to May 25, 1999]. I heard other employees making negative/derogatory remarks towards [appellant] on numerous occasions. On [April 20, 1999] I told [appellant] that she should watch her back because some employees were not too happy with her return. I was also present during several loud arguments among the clerks concerning her possible return as a clerk. Most of the clerks were angry at the prospect of her working there as a clerk and they were not shy about voicing their opinions, with or without [appellant] present.”

The Board has held that to the extent that disputes or incidents alleged as constituting harassment by coworkers or supervisors are established as occurring and arising from the employee's performance of regular or specially assigned duties, these could constitute employment factors. Verbal altercations, when sufficiently detailed by the claimant and supported by the evidence of record, may constitute factors of employment.⁷

While the statement from Mr. Syph offers some support for appellant's allegations, it is too vague to constitute the type of corroboration necessary to establish appellant's claim. While Mr. Syph may have overheard derogatory comments or arguments about appellant, his statement does not establish any specific incident that both he and appellant heard. Similarly, in telling appellant that she needed to watch her back because of the anger and hostility of the other clerks, Mr. Syph offered no specifics or factual support for his warning.

The Board has held that a claimant reaction to, or fear of, gossip or rumors is a personal frustration that is not related to an employee's job duties or requirements and, therefore, is not compensable.⁸ The Board finds that appellant has failed to submit evidence sufficient to establish the alleged occurrences, including time, place and circumstance of these events and comments, to the case record. Consequently, they are not established as occurring and are not compensable under the Act.

⁷ *Mildred D. Thomas*, 42 ECAB 888 (1991).

⁸ *Gracie A. Richardson*, 42 ECAB 850 (1991).

The January 14, 2000 and September 13, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member