U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARMAINE L. LATHAM and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

Docket No. 00-2174; Submitted on the Record;
Issued July 20, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned her request for a hearing; and (2) whether appellant sustained an emotional condition in the performance of duty.

On April 30, 1993 appellant, then a 37-year-old letter carrier, filed a claim for severe depression. By decisions dated July 19, 1994, January 7, 1995 and April 16, 1996, the Office denied appellant's claim, No. A10-424015, stating that the evidence failed to establish an injury as alleged.

On July 6, 1998 appellant filed an emotional claim, alleging that she sustained panic disorder with agoraphobia in addition to her depression. Appellant submitted medical documents showing that she was being treated for depression, panic attacks and agoraphobia. By letter dated July 28, 1998, the Office noted that it denied her 1993 claim for depression and, therefore, only work incidents occurring after 1996 and her conditions of panic attacks and agoraphobia would be considered. The Office stated that if those conditions, however, were related to her depression, a new claim would not be considered. Further, the Office informed appellant that additional information was necessary including her describing specific factors at work, which contributed to her condition.

Appellant cited several incidents where she felt she was harassed. She stated that on April 25, 1996, George Bridges, the acting manager of section six, approached her and threatened her saying he was "going to get her one way or another." Appellant stated that from April 25 until July 5, 1996, Mr. Bridges discussed a letter she had written to the manager, Mr. Smith, in hopes of turning the employees that she mentioned in the letter against her. She stated that Mr. Bridges told a coworker, Jolsen Wilson, that it was appellant's fault she was being moved from Sears. Appellant also stated that Mr. Bridges "never mentioned her letter" and he put her "in a very compromising position with her fellow employees." She stated that, when Mr. Bridges came to Sears, he would make her feel uncomfortable by intently staring at her "with indignation." Appellant also stated that she had altercations with Ms. Howard, that on

February 25, 1997 she reported Ms. Howard to the postal inspectors and that on April 30, 1996 she filed an accident report.

Appellant stated that on April 25, 1996 Mr. Bridges had Ms. Harris call Sears and tell her and Ms. Wilson to report to the main post office. She stated that she filed a grievance, which she won. Appellant stated that from February 25 through May 15, 1997, she "was forced to work in a hostile environment." She stated that she was afraid of what Ms. Howard would do to her as she had been known to hit and threaten other employees. Appellant stated that from May 16 through September 1997 she was displaced from her bid assignment and ordered to remain at the station all day to case mail with the router. Appellant stated that she was denied overtime during this time period and "left open to public ridicule."

Appellant stated that to get away from the harassment, she returned to active duty for a month and when she returned to work in January 1998, she filed a second grievance concerning her bid assignment, which she won but stated that management did not honor it. She stated that from February 2 through March 23, 1998, Ms. Harris and Ms. Willes put pressure on her everyday she worked to throw mail according to standards not covered under the collective bargaining agreement. Appellant stated that she did not understand why she was being harassed and treated differently from other employees since Mr. Bridges was no longer there. She stated that from March 25 through April 3, 1998 she requested military leave and on April 9, 1998 she requested sick and stress leave but none of "this time was ever put in."

Appellant stated that on April 14, 1998 Mr. Sherapist wrote a letter to Solomon X. Sconiers requesting that appellant be moved and another letter was written on June 8, 1998. She stated that the most "recent attack" was "them" trying to fire her.

By letter dated February 18, 1999, Mr. Sconiers, the operations manager, stated that the employing establishment had zero tolerance for any sort of behavior, which led to violations of Equal Employment Opportunity laws and regulations. He further stated that over a three-year period he met with appellant to discuss performance, attendance and peer conflict. Mr. Sconiers believed that "most of" appellant's statements "lack[ed] the basis of truth and appear[ed] to be extremely inaccurate to [his] recollection." He stated that appellant had a conflict with a coworker, Irene Tate, at the Sears Tower off-site mailroom and when the issue was brought to management's attention, they separated them and gave them notice that personal issues could not continue to affect their work or interfere with servicing the customers and that the consequence could be removal from their jobs.

In an unsigned and undated note in her handwriting, appellant stated that management also did not respond to her therapist's letters written in August 1997 and in April and June 1998 that she should be moved to another location. She felt the lack of response was a sign of hostility towards her.

In another statement, appellant stated that she had been suffering from the panic attacks since she was removed from her bid assignment located at Sears Towers. She stated that in May 1997, after threatening to take her job in April 1996, Mr. Bridges began to intimidate and harass her. Appellant stated that she was made "to feel isolated by him and his supervisors[']' treatment towards [her]." She stated that on a daily basis she was made to feel that she was not productive

enough and she felt like "a caged animal." Appellant stated that Mr. Bridges would come to where she was throwing mail and "never say good morning or wanting to discuss [her] letter to Mr. Smith, the manager of section six." She reiterated that Mr. Bridges discussed the letter with people she mentioned in the letter so they "would alienate [her] or worse." Further, she stated that Ms. Howard, whom she mentioned in her letter began "acting very hostile towards [her]." Appellant stated that she called the Postal Inspectors on Ms. Howard but Mr. Bridges refused to move her, that he had given Ms. Howard a detail to work at Sears but refused appellant's request for a detail elsewhere to be removed from the harassment. She stated that Mr. Bridges would "stand and stare at [her] with hate filled eyes" and would insist to the supervisors that she was not throwing the mail fast enough.

Appellant stated that on the day Mr. Bridges told her that he was going to move her back to the main post office, he called her a "bitch" as she was leaving Ms. Stansberry's office. In the settlement of a grievance dated October 21, 1997, management and the union agreed that appellant "shall be returned to her bid assignment without delay" and that management "did not articulate an unanticipated circumstance for the temporary change in assignment." The document stated that the grievance was being settled without prejudice of either party in that case or any other case. Appellant stated that the grievance she filed on May 7, 1996, addressing, in part, her being pulled off her bid at Sears and being reassigned to the main post office station which subjected her to "ridicule from her coworkers, humiliation and disrespect" was resolved between the union steward, Mr. Cotton and Mr. Bridges.

In a statement dated June 18, 1999, Mr. Bridges stated that appellant was not removed from her bidding assignment but merely relocated to the main post office due to the mail volume. He stated that he "never approached [appellant] with any kind of threat, nor did [he] say [he] was going to get her." Mr. Bridges stated that he was not the manager of section six on April 25, 1996. He denied ever discussing any letter with the employees to turn them against appellant. Mr. Bridges also denied going to the Sears Tower and staring at appellant, stating that, when he went to the Sears Tower it was for official business. He stated that there were verbal altercations between appellant and Ms. Howard and he, the supervisors, the tour superintendent, appellant and Ms. Howard addressed the problem in an official meeting in the conference room at the main office. Mr. Bridges denied that appellant was moved off her bid assignment from May 16 through September 1997, denied that he ordered her to remain in the station all day to case mail with the router and denied that she was denied overtime. He stated that she was to go to the Sears mailroom as needed. Mr. Bridges stated that he had no knowledge of any grievance. He stated that he did not recall that on April 25, 1996 he had Ms. Harris call Sears and tell appellant and Ms. Wilson to report to the main post office.

In a statement dated April 30, 1999, Mr. Bridges denied that he ever discriminated against appellant, retaliated against her or ever touched her. He described one incident where the manager, Robert Smith, asked him to accompany him to the Sears Tower to observe appellant in response to a letter she wrote to Mr. Smith. Mr. Bridges stated that appellant was clocked in but not present, but he learned she had gone to park her car and he so informed Mr. Smith.

By decision dated July 23, 1999, the Office denied the claim, No. A10-0478708, stating that she did not meet the requirements for establishing that she sustained an injury in the performance of duty.

By letter dated August 22, 1999, appellant requested an oral hearing before an Office hearing representative.

By letter dated January 7, 2000, the Office informed appellant that an oral hearing would be held on February 22, 2000 at 3:30 p.m. in Chicago, Illinois.

By decision dated March 1, 2000, the Office found that appellant abandoned her request for a hearing because she failed to appear and did not contact the Office prior or subsequent to the scheduled hearing to explain her failure to appear.

The Board finds that appellant abandoned her request for an oral hearing before an Office hearing representative.

Section 10.137 of Title 20 of the Code of Federal Regulations revised as of April 1, 1997 previously set forth the criteria for abandonment:

> "A schedule hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in assessment of costs against such claimant."
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> "A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing."[1]

These regulations, however, were once again revised as of April 1, 1999. Effective January 4, 1999, the regulations now make no provision for abandonment. Section 10.622(b) addresses requests for postponement and provides for a review of the written record when the request to postpone does not meet certain conditions. Alternatively, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative. The section is silent on the issue of abandonment.

[1] 20 C.F.R. §§ 10.137(a), 10.137(c) (revised as of April 1, 1997).

The legal authority governing abandonment of hearing now rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual dated January 1999 provides as follows:

> "e. *Abandonment of Hearing Requests.*
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> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.
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> "Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [District Office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.
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> "(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.
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> "This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is therefore expected to attend the hearing, and the claimant does not attend."[2]

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on February 22, 2000. The Office shows that it mailed the appropriate notice to appellant at the correct address. The record supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Board finds that appellant abandoned her request for an oral hearing before an Office hearing representative.

The Board finds that appellant has failed to establish a factual basis for her claim 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

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e. (January 1999).

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.[3] 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.[4]

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.[5] 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.[6]

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.[7] 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.[8] To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.[9]

In this case, appellant's complaints that management harassed her, discriminated against her, retaliated against her and treated her hostilely were general and vague and not corroborated by evidence of record. Mr. Bridges denied he stared hostilely at appellant when he went to the Sears building, he denied discussing a letter she had written with other employees to turn them against her and he denied that he ever threatened her. He also denied moving appellant off her bid assignment from May through September 1997, denied that appellant was denied overtime and denied that she was ordered to remain in the mailroom unit all day. Mr. Bridges stated that there were verbal altercations between appellant and Ms. Howard, which were addressed by management with appellant and Ms. Howard in an official meeting. Appellant's other allegations including that Mr. Bridges did not say hello to her in the morning, that she was pressured to meet unreasonable work requirements and Mr. Bridges called her a "bitch," were not corroborated by other evidence in the record. She also did not corroborate that she was denied military, sick or stress leave in March and April 1998. But even if she had been denied

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Clara T. Noga*, *supra* note 4 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[6] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[7] *Michael Ewanichak*, 48 ECAB 364 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[8] *See Martha L. Cook*, 47 ECAB 226 (1995).

[9] *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

that leave, because that relates to management's administrative function, appellant would have had to show that management acted abusively or unreasonably in denying her the leave which she did not establish.[10]

One of appellant's complaints which was corroborated was that she was removed from her bid at Sears and reassigned to the main post office. Mr. Bridges stated that he did not remove appellant from her bid assignment but relocated her to the main post office due to mail volume. The settlement of the grievance dated October 21, 1997, however, stated that appellant should be returned to her bid assignment without delay and that management did not articulate an unanticipated circumstance for the temporary change in assignment. The Board has held that 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 a desire to work in a different position.[11] In this case, since the grievance was settled without prejudice to either party, appellant has not shown that management acted abusively in removing her from her bid assignment. She also did not show that management did not honor the settlement or acted abusively or unreasonably in this regard. Because appellant has failed to show any compensable factors of employment, she has failed to establish her claim. Further, the Board need not consider the medical evidence.[12]

The decisions of the Office of Workers' Compensation Programs dated March 1, 2000 and July 23, 1999 are hereby affirmed.

Dated, Washington, DC
July 20, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[10] *Joe L. Wilkerson*, 47 ECAB 604, 606-07 (1996).

[11] *Ronald C. Hand*, 49 ECAB 113, 115 (1997).

[12] *Diane C. Bernard*, 45 ECAB 223, 228 (1993).