

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH D. JENNINGS and U.S. POSTAL SERVICE,
POST OFFICE, Coppel, TX

*Docket No. 00-2775; Submitted on the Record;
Issued July 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.²

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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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 of Workers'

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

Compensation Programs, 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.⁵ 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.⁶

On April 19, 2000 appellant, then a 33-year-old distribution clerk, filed a claim alleging that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated August 4, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that, on March 28, 2000 a coworker, Rhonda Sanford, tried to hit her with a rolling wire cage. She suggested that, on March 31, 2000 a coworker threw her keys and identification badge in the trash. Appellant claimed that, on April 4, 2000 Ms. Sanford threatened her with physical harm and subjected her to vulgar and abusive statements.⁷ She alleged that Ms. Sanford approached her "with her fist ball[ed] up" when she made such threats. Appellant claimed that, on one occasion Ms. Sanford changed the television channel she was watching in the break room and refused to turn it back. She alleged that, when she offered her chair to a coworker, Ms. Sanford told the coworker that she might "catch something." Appellant claimed generally that, for a period of a year and a half, Ms. Sanford called her vulgar names on a regular basis. She suggested that she was harassed by coworkers who wrongly claimed that she attempted to run them over with her vehicle in the employing establishment parking lot.

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁸ 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. Mere perceptions of harassment are not compensable under the Act.⁹ In the present case,

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ Appellant claimed that Ms. Sanford called her "everything from A to Z."

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed by her coworkers.¹⁰

Appellant alleged that coworkers made statements and engaged in actions, which she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹¹ With respect to the claimed April 4, 2000 incident, appellant asserted that the incident was witnessed by coworkers. However, appellant did not submit any witness statements regarding this matter despite being provided with an opportunity to do so. Appellant indicated that she filed claims in connection with some of the alleged acts of harassment, but the record does not contain the findings of any such proceedings.¹² The record does not contain any evidence that coworkers harassed her by filing false charges regarding the claimed incidents in the employing establishment parking lot.¹³ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant alleged that, on April 6, 2000 the employing establishment unfairly denied her request for administrative leave and requested that she report to a work unit where she did not wish to work. She further alleged that the employing establishment did not adequately respond to her concerns about Ms. Sanford.¹⁴ The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁵ Although the handling of leave requests, the assignment of work duties, and the disciplining of employees are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁶ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part

¹⁰ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence). The record contains a July 26, 2000 statement in which a supervisor stated that appellant made "unfounded accusations" about coworkers and instigated confrontations and disruptions on several occasions.

¹¹ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹² The record contains a May 5, 2000 letter in which a postal inspector indicated that a report was filed in connection with the April 4, 2000 incident claimed by appellant but that the inspection service determined that further investigation was not necessary.

¹³ In a statement dated February 9, 2000, Cynthia Burroughs claimed that appellant almost hit her with her automobile in the employing establishment parking lot on that date. She noted that she believed appellant's actions were intended as a threat. The record also contains an undated statement in which another coworker, Susan Bange, indicated that, on February 9, 2000 she witnessed appellant almost hit Ms. Burroughs with her automobile. Ms. Bange stated that on February 5, 2000 appellant almost hit her with her automobile in the employing establishment parking lot.

¹⁴ Appellant indicated that she filed a grievance with the employing establishment and instituted a court action with respect to the claimed actions of Ms. Sanford.

¹⁵ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁶ *Id.*

of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁷

Appellant has not presented sufficient evidence showing that the employing establishment committed error or abuse with respect to the above-noted matters. With particular regard to appellant's wish not be sent to a particular work unit, the Board has held that denials by an employing establishment of a request for a different job are not compensable factors of employment as they do not involve the employee's ability to perform her regular or specially assigned work duties.¹⁸ Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁹

The August 4, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 19, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁷ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁸ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹⁹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).