

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SABRINA HAYES and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

*Docket No. 01-354; Submitted on the Record;
Issued July 27, 2001*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant, a 40-year-old clerk, filed a notice of recurrence of disability on May 10, 2000 alleging that she had sustained a recurrence of her November 15, 1999 employment injury due to sexual harassment. Appellant stated that she was asked whether she wanted to have group sex or sex with another woman. She alleged that these questions caused a recurrence of her depression. Appellant filed a notice of traumatic injury on May 30, 2000 alleging the same factors of employment. By decision dated August 23, 2000, the Office of Workers' Compensation Programs denied appellant's claim finding that she failed to establish that the harassment occurred as alleged.¹

The Board finds the case not in posture for decision.

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.²

¹ Following the Office's August 23, 2000 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

Appellant attributed her emotional condition to an interview with Rueben Gay on April 12, 2000. Appellant stated that she was questioned in reference to a sexual harassment claim by Tony Bibbs. She alleged that Mr. Gay, a representative of the National Association of Supervisors, asked if she wanted to have sex with coworkers, whether she was going to report an affair that she was having with a supervisor, whether she owned a rifle and whether she threatened to kill Mr. Bibbs and Matt Cosins. Appellant stated that there were no witnesses to this interrogation. Appellant stated that these questions caused her currently diagnosed depression. In response to an inquiry by the Office, appellant stated that Mr. Bibbs was pursuing a sexual harassment claim “trying to get his job back.”

The employing establishment noted that Mr. Gay reported interviewing appellant on April 12, 2000, but that he had not submitted a written statement. The employing establishment did not provide any explanation for the interview or investigation despite inquiries by the Office.

In this case, appellant has attributed her emotional condition to harassment during the course of an investigation by the employing establishment. While investigations into alleged illegal or improper acts are not within an employee’s performance of duty, erroneous actions or abuse by the employing establishment, which would otherwise be an administrative matter, may afford coverage under the Federal Employees’ Compensation Act.³

The Office has requested additional information from the employing establishment regarding the grounds of the investigation and a statement from Mr. Gay regarding the interview on April 12, 2000. At the time of the Office’s August 23, 2000 decision, the employing establishment had not responded to the Office’s requests for information.

Proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁴ In this case, the Office requested additional information from the employing establishment and failed to procure this information prior to denying appellant’s claim. Consequentially, the record before the Board does not contain information which would clarify why appellant was interviewed and whether the interview was conducted in a manner which would constitute error or abuse on the part of the employing establishment. On remand, the Office should secure a clear statement from the employing establishment regarding the circumstances surrounding the April 12, 2000 interview, the questions asked of appellant and the relevance such questions had to the matter under investigation. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

³ 5 U.S.C. §§ 8101-8193; *Hubert C. Burton*, 43 ECAB 612, 623 (1992).

⁴ *Hubert C. Burton, id.* at 624.

The August 23, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
July 27, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member