U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLENE P. WATKINS and U.S. POSTAL SERVICE,
POST OFFICE, West Sacramento, CA

Docket No. 00-2696; Submitted on the Record;
Issued June 26, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

The Board finds that appellant did not 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 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]

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

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[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).

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' 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 January 19, 2000 appellant, then a 37-year-old postal 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 July 25, 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 beginning in 1998 Tony Funaro, a postmaster at the employing establishment, had "temper tantrums" and unfairly disciplined employees, particularly female employees. She suggested that the employing establishment retaliated against employees who signed a letter to a congressman, which contained complaints about Mr. Funaro's behavior. Appellant stated that Mr. Funaro and Pat Dean, another supervisor, harassed her by altering her limited-duty work restrictions, which required her to elevate her legs for 20 minutes every 2 ½ hours. She alleged that on January 4 and 5, 2000 Mr. Dean humiliated her by requesting that she work as a "lobby monitor," a task which required her to perform customer service duties in the lobby with her legs elevated. Appellant claimed that working as a lobby monitor would be a safety and health hazard and was contrary to her work restrictions.[7] She alleged that she was asked to work as a lobby monitor as a discriminatory form of punishment. Appellant claimed that on January 6, 2000 Mr. Dean and Mr. Funaro again approached her regarding the lobby monitor task and that Mr. Funaro spoke rudely to her when he ordered her to perform the task or leave the facility.[8] She alleged that a limited-duty job she was offered in January 2000 was contrary to her work restrictions and seemed to have been offered with punitive intent.

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

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

[6] *Id.*

[7] Appellant alleged that there was not enough room in the lobby to elevate her legs.

[8] Appellant indicated that Mr. Funaro's fists were clenched and that she felt threatened by him.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[9] However, for harassment or discrimination 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 or discrimination are not compensable under the Act.[10] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.[11]

Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[12] Appellant submitted several statements, in which coworkers asserted that Mr. Funaro spoke rudely to them. However, these statements would not be relevant to appellant's claim that Mr. Funaro had harassed her. With respect to the request to work as lobby monitor, the record does not contain evidence that shows it was improper to assign appellant to this work or otherwise demonstrates that it was assigned in a discriminatory or abusive manner.[13] Appellant filed an Equal Employment Opportunity (EEO) claim in connection with these matters, but the record does not contain an indication of the claim's outcome. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant alleged that the employing establishment improperly denied her requests for leave in January 2000.[14] She claimed that in February 2000 the employing establishment unfairly issued her disciplinary letters, in connection with her attendance and the lobby monitor matter. Appellant alleged that on March 8, 2000 she was wrongly issued a seven-day suspension for failure to follow her supervisor's instructions for not signing a limited-duty job offer.[15] She alleged that the lobby monitor task was assigned in a manner which violated established procedure.

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

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

[11] *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).

[12] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[13] A coworker stated that she felt the lobby monitor task would have caused embarrassment for appellant, but such a statement would not be sufficient to show that the assignment of the task constituted harassment or discrimination.

[14] Appellant stated that she eventually received an adjustment in her pay check for three weeks of leave she took in January 2000.

[15] The suspension letter noted that appellant failed to indicate whether she was accepting or rejecting a limited-duty job offer.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave and improperly assigned work duties, 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.[16] Although the handling of disciplinary actions, leave requests and the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[17] 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 of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[18]

Appellant did not submit sufficient evidence to show that the employing establishment committed error or abuse with respect to the above-described matters. Appellant filed an EEO complaint in connection with some of these matters, but the record does not contain a decision showing that the employing establishment committed error or abuse. On March 16, 2000 the employing establishment withdrew appellant's seven-day suspension and classified the disciplinary action as an official discussion. However, the employing establishment did not indicate that it had erred in issuing the suspension. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[19] Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that in February 2000 the employing establishment wrongly subjected her and several coworkers to investigative interviews in connection with the lobby monitor matter and a grievance she filed in connection with the matter. Appellant asserted that two coworkers advised her that Mr. Funaro used profanity when they were in his office during the investigation process.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.[20] However, as noted above, 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 of the employing establishment. Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. Appellant alleged that Mr. Funaro made abusive comments to

[16] *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).

[17] *Id.*

[18] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[19] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[20] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

coworkers during the investigation, but she did not explain how this assertion showed that the she was subjected to an improper investigation process. Thus, appellant has not established a compensable employment factor under the Act in this respect.

With general respect to appellant's wish not to perform the lobby monitor task, the Board has held that denials by an employing establishment of 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 her regular or specially assigned work duties but rather constitute her desire to work in a different position.[21] Moreover, appellant did not establish her assertion that the task was beyond her work restrictions.[22]

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.[23]

The July 25, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 26, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[21] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[22] The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record. *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[23] 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).