

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN S. BURCH and U.S. POSTAL SERVICE,
POST OFFICE, Gardner, KS

*Docket No. 99-1647; Submitted on the Record;
Issued June 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition prior to September 3, 1996 while in the performance of her duties.

On January 22, 1997 appellant, then a 47-year-old postmaster, filed an occupational disease or illness claim asserting that her acute post-traumatic stress disorder was a result of her federal employment: "For six months I endured Mr. Rauh's¹ constant discrimination, harassment and abuse of me personally. He deprived me of all dignity and respect. I was told by Mr. Rauh not to ask questions or voice my opinions." Appellant indicated that she first became aware of her condition on September 3, 1996 and first realized on that date that her condition was caused or aggravated by her employment. She stopped work on September 3, 1996 and did not return.

To support her claim, appellant submitted a February 18, 1997 report from Dr. Linda J. Kohler, a Board-certified psychiatrist. She provided Dr. Kohler a detailed account describing malicious verbal and emotional harassment by Mr. Rauh. Dr. Kohler related her findings and diagnosed acute post-traumatic stress disorder. She indicated with an affirmative mark that appellant's condition was caused or aggravated by employment activities. Dr. Kohler explained: "As with any human being exposed to trauma (threats, verbal assaults, fear of physical violence) over a period of time, she would be expected to suffer emotional/physiologic repercussions from an extended indefinite time." Dr. Kohler first examined appellant on September 10, 1996. She reported that appellant was totally disabled beginning September 3, 1996.

The factual evidence in this case is well developed and shows that appellant had a discordant, contentious relationship with her manager in 1996. Of note are disciplinary actions in 1996, including two letters of warning that led to an unacceptable merit evaluation and

¹ David R. Rauh, appellant's supervisor, was manager of post office operations.

appellant's exclusion from the Variable Pay Program. Appellant took administrative appeals and filed an Equal Employment Opportunity (EEO) complaint.

In a decision dated May 20, 1997, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the implicated factors of employment that were established as having occurred were not compensable under the Federal Employees' Compensation Act.²

Appellant requested a hearing before an Office hearing representative. She submitted, among many other things, a copy of her complaint in federal district court for violations of Title VII of the Civil Rights Act of 1964 (as amended), Americans with Disabilities Act and the Age Discrimination in Employment Act. The hearing was held on January 26, 1998.

In a decision dated March 26, 1999, the hearing representative affirmed the denial of appellant's claim. The hearing representative found that the incidents appellant alleged did not arise in the performance of duty within the meaning of the Act.

The Board finds that the evidence of record is insufficient to establish that appellant sustained an emotional condition prior to September 3, 1996, while in the performance of her duties.

The hearing representative fully explained and applied the applicable law in her March 26, 1999 decision. The Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ Workers' compensation law, however, does not cover each and every injury or illness that is somehow related to employment.⁴ No mental or emotional condition arising principally out of a bona fide administrative or personnel action, including a transfer, promotion, demotion or termination from employment, should be deemed to be a personal injury occurring within the performance of duty, except such actions which are erroneous or deemed abusive or actions involving the intentional infliction of emotional harm or involving willful misconduct.⁵

The Board has thus held that in the absence of error or abuse an oral reprimand does not constitute a compensable factor of employment,⁶ neither do disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct;⁷ investigations;⁸

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8102(a).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Leroy Thomas, III*, 46 ECAB 946 (1995) (discussion of the applicable principle by Willie T.C. Thomas, then Alternate Member, dissenting). See generally *Thomas D. McEuen*, 42 ECAB 566 (1991), *reaffirming Thomas D. McEuen*, 41 ECAB 387 (1990).

⁶ *Joseph F. McHale*, 45 ECAB 669 (1994).

⁷ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁸ *Sandra F. Powell*, 45 ECAB 877 (1994).

determinations concerning promotions and the work environment;⁹ discussions about an SF-171;¹⁰ reassignment and subsequent denial of requests for transfer;¹¹ discussion about the employee's relationship with other supervisors;¹² or the monitoring of work by a supervisor.¹³

Perceptions alone, or mere allegations of error or abuse, are insufficient to bring such administrative actions within the scope of coverage. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.¹⁴

In this case, appellant attributes her acute post-traumatic stress disorder to the actions or conduct of her supervisor, the manager of post office operations. The medical opinion evidence supports that appellant's diagnosed psychiatric condition arose from her interactions with this manager. As a general rule, however, appellant's emotional reaction to such lies outside scope of coverage of workers' compensation. To establish a compensable factor of employment and possible entitlement to compensation benefits, appellant must submit probative and reliable evidence that substantiates error or abuse by the manager. The Board has reviewed the record on appeal and can find no such evidence. Appellant took administrative appeals from disciplinary and personnel actions and filed administrative and legal complaints for discrimination and harassment, but the record contains no findings or decisions in these matters to support error or abuse by the manager. Although testimony at the January 26, 1998 hearing indicated that the Postal Inspection Service investigated the manager's conduct in relation to appellant's complaints, leading to a letter of warning in lieu of suspension for the manager, appellant submitted no investigative memorandum or letter of warning to support her claim.

The question in this case is one of proof. Without persuasive evidence that substantiates error or abuse by the manager in the disciplinary actions he took against appellant or in the exercise of his managerial or supervisory duties, the record fails to establish a factor of employment that may be deemed to fall within the scope of the Act.

⁹ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

¹⁰ *Lorna R. Strong*, 45 ECAB 470 (1994).

¹¹ *James W. Griffin*, 45 ECAB 774 (1994).

¹² *Raul Campbell*, 45 ECAB 869 (1994).

¹³ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

The March 26, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member