U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. SCHOENICK and U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI

Docket No. 99-1869; Submitted on the Record;
Issued June 11, 2001

DECISION and ORDER

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

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

This case has been before the Board in a prior appeal. In a decision dated November 3, 1998, the Board set aside October 7 and June 28, 1996 decisions of the Office of Workers' Compensation Programs denying appellant's request for reconsideration under 5 U.S.C. § 8128.[1] The Board remanded the case for merit review. The findings of fact as set forth in the prior decision are hereby incorporated by reference.

By decision dated February 25, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its October 14, 1994 decision.

The Board finds that appellant has not established 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.[2] On the other hand, the disability is not covered where it results from such factors as an

[1] Appellant, Docket No. 97-801 (issued November 3, 1998).

[2] 5 U.S.C. §§ 8101-8193.

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.[3]

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.[4] 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.[5]

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, 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.[6] 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.[7]

Appellant attributed her emotional condition to harassment by her supervisor, John Fisher. To the extent that disputes and incidents alleged as constituting harassment and discrimination by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[8] 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.[9]

Appellant related that Mr. Fisher behaved toward her in a hostile and abusive manner, threatened her job, criticized her work, sent her home because there was no work even though other employees were paid overtime, failed to train her in the modified two-bundle system, required her to stand to case mail, failed to provide her with a Form 3996, which was necessary to request overtime and defamed her character at a meeting on February 19, 1992. Appellant further related that, on March 31, 1992, Mr. Fisher yelled at her and told her that she should not

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

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

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

[7] *Id.*

[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).

be at work because she was not on the overtime list. Appellant stated that Mr. Fisher's actions on March 31, 1992 caused her to collapse and require treatment at a hospital.

The employing establishment controverted appellant's claim that she was harassed at work. In an undated statement, Mr. Fisher related that appellant had work restrictions after injuring her wrist at home. He noted that he provided appellant with light-duty casing mail. Mr. Fisher indicated that, on December 21, 1991, appellant brought in increased work restrictions and that there was no work available within her physical limitation. He further stated that, after conversion to the modified two-bundle mail system, he had only six hours of work per day available to appellant within her restrictions. Mr. Fisher related that he told appellant that she could not sit to case mail because she "could not reach the top shelf while sitting and intermittent standing during her half hour required sitting would violate her medical restrictions." Mr. Fisher also stated that he did not refer to appellant by name at any meeting and that "any references to someone not being worth the money had to do with scheduling, overtime, other volunteers and medical restrictions and not her by name." Mr. Fisher related:

> "In regards to the incident on the 31st of March, at no time did I raise my voice or single out [appellant]. It was never reported to me by her or the other employee what was happening before I dialed 911 so I could not respond to the dispatcher's questions."

In this case, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by Mr. Fisher.[10] In support of her claim, appellant submitted numerous statements from coworkers. In a statement dated October 26, 1992, Kenneth E. Richardson related that he believed that appellant was "deliberately harassed by one supervisor when she developed physical problems." Ann Szalewiski, in a January 20, 1993 statement, noted that she did not like Mr. Fisher's management style and that he "singled out certain carriers" for abuse. In a statement dated July 11, 1993, John Ulik related that Mr. Fisher attacked appellant when she got to work each day and behaved badly on the day that appellant was taken to the hospital. In an undated statement, John Van Haagh described appellant as a good worker and noted that Mr. Fisher had an "archaic management style." Mr. Van Haag also stated, in a note dated September 26, 1995, that Mr. Fisher was condescending and harassing to appellant. However, appellant's coworkers did not provide any specific examples of abuse or harassment by Mr. Fisher towards appellant. Thus, their statements are insufficient to meet appellant's burden of proof.

In statements dated September 5, 1992 and August 21, 1996, Dennis W. Knepper related that Mr. Fisher told him that appellant was "not worth the money" to bring in to work. In an undated statement, Ronald J. Kania indicated that Mr. Fisher stated that appellant was not "worth the money" to call in to work over a holiday and, in another statement, related that Mr. Fisher would not let appellant sit to case mail and sent her home for lack of work. Michael L. Kosmider, in a July 12, 1993 statement, noted that Mr. Fisher would not let appellant sit to case mail or take her break at the same time as her coworkers. Mr. Kosmider also stated

[10] *See Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

that Mr. Fisher introduced the modified two-bundle system and then told appellant that there was no work for her. Mr. Fisher, however, explained that appellant did not have full-time employment due to limitations arising from a nonemployment-related injury. He related that any references to her being "not worth the money" to bring into work were made as part of scheduling decisions. Mr. Fisher also stated that appellant could not sit to case mail because it would be outside her physical limitations. Appellant has not submitted sufficient evidence establishing error or abuse by Mr. Fisher in his supervisory decisions, or to establish that his actions constituted harassment or discrimination.

Appellant submitted copies of grievances she filed which were settled without a determination of fault by the employing establishment. She also submitted a grievance settlement regarding another employing establishment employee, which held that it was an error for the employee to receive a letter of warning for a mistake in estimation on a Form 3996. This evidence, however, does not support her allegations that Mr. Fisher harassed or discriminated against her and thus is of little probative value.

Regarding appellant's allegation that Mr. Fisher verbally abused her on March 31, 1992, Mr. Kosmider provided a statement dated October 11, 1995, in which he indicated that on March 31, 1992 Mr. Fisher yelled at appellant that she knew "there is no such list." In a statement dated October 7, 1995, Mr. Ulik related that on March 31, 1992 Mr. Fisher asked appellant what she was doing at work in an angry voice and shouted, "You know there is no such list." Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[11] In this case, appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[12] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and verbal abuse by Mr. Fisher.

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.[13]

The February 25, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 11, 2001

[11] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[12] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[13] 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).

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member