

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELILAH C. PEREGRINO and U.S. POSTAL SERVICE,
BUSINESS MAIL ENTRY DIVISION, Merrifield, VA

*Docket No. 00-724; Submitted on the Record;
Issued March 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty as alleged.

On October 23, 1997 appellant, then a 46-year-old general clerk, filed a notice alleging that she sustained “work[-]related stress” in the performance of duty due to a pattern of alleged harassment and discrimination by Rosalind Jamison, her supervisor, from July to October 1997.¹ She stopped work on October 23, 1997 and was off work through November 21, 1997. Appellant returned to work in a secretarial position in the parts office of the maintenance division.

In an attached statement, appellant described a series of incidents which she characterized as harassment, hostility or threatened “attack[s]” by Ms. Jamison, as follows:² on July 28 and August 13, 1997, Ms. Jamison yelled at appellant and made sarcastic remarks; on August 6 and September 22, 1997 Ms. Jamison instructed appellant to look for another position as she allegedly wanted to replace her with Arlene Morris, a personal friend who appellant asserted was “lazy” and not qualified; on September 10, 1997, Ms. Jamison accused appellant of impropriety when a customer addressed an inquiry directly to her instead of Ms. Jamison; on September 12, 1997, Ms. Jamison instructed appellant not to call other post offices to obtain address information although she allegedly “confiscated” the postmaster label list; on September 18, 1997, when appellant asked for clarification of a documents order, Ms. Jamison allegedly stuck “her face almost in mine and she said FORMS in a very angry manner”

¹ In a November 12, 1997 letter, the Office advised appellant of the type of medical and factual evidence needed to establish her claim.

² Appellant also submitted a September 30, 1997 grievance form alleging that Ms. Jamison discriminated against her due to her “race, color [and] national origin” because appellant, who describes herself as Filipino was not African American as was Ms. Jamison. She also alleged that coworkers Arlene Morris, Joyce Paige and Janet Miller laughed at her or failed to greet her. There is no final decision of record regarding this grievance.

(emphasis in original); on September 19, 1997 Ms. Jamison criticized appellant for not answering a phone line that Ms. Jamison used for her private conversations; on September 26, 1997 Ms. Jamison followed her with a very angry expression; on October 6 and 8, 1997 Ms. Jamison reiterated that appellant must inform her whenever she left the office but allegedly did not require other employees to do so.

In an October 23, 1997 letter, Ms. Jamison noted that when appellant came into the position in July 1997, she was immediately scheduled for appropriate computer and secretarial courses. Ms. Jamison stated that generally, appellant misspelled caller's names, did not give Ms. Jamison messages, had difficulty in understanding instructions and in making herself understood.

Ms. Jamison therefore informed appellant that the "position was probably not a job she should have because she is having difficulty understanding what she is supposed to do" and her work was of poor quality.³ In addition to performance problems, appellant also allegedly lied on September 26, 1997 about receiving improper filing instructions from Ms. Morris regarding "BRMAS" (business reply mail accounting program) applications, was rude to Ms. Jamison, and from October 6 to 8, 1997 deliberately failed to comply with Ms. Jamison's instructions to let her know whenever she was leaving the office.

By decision dated April 30, 1998, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that appellant submitted insufficient evidence to corroborate that any of the alleged incidents occurred as stated, noting that Ms. Jamison's statement contradicted appellant's account of events. Appellant disagreed with this decision and in a letter received May 18, 1998 requested an oral hearing before a

³ Ms. Jamison listed numerous examples of appellant's performance problems. She stated that on August 18, 1997, appellant incorrectly filled out a publication order form resulting in a shortage of workshop materials. On September 16, 1997 appellant phoned the Ashburn post office to obtain an address instead of looking in the telephone directory where it was listed, seriously misprocessed training disseminations on September 17, 1997, was unable to complete an order form on September 18, 1997 although she had been trained, and needed to be instructed on September 19, 1997 to remove expired addresses from a mailing list. On September 24, 1997 appellant misunderstood instructions and improperly prepared rate change approval letters that should have been denials. Ms. Jamison also submitted copies of appellant's work showing various substantive and processing errors. September 24 and October 6, 1997 letters regarding business rate application approvals required several corrections. An August 18, 1997 order slip shows that Ms. Jamison ordered "10 cases" of the publication "Designing Letter Mail," whereas appellant ordered only 10 copies. On October 16, 1997 a bulk rate table which appellant was to photocopy and distribute had illegible columns due to poor copier contrast. Ms. Jamison noted that the mailing had to be redone.

representative of the Office's Branch of Hearings and Review, held December 3, 1998. She submitted additional factual⁴ and medical evidence.⁵

A November 22, 1997 step one grievance form indicates that appellant's sick leave from October 23 to November 21, 1997 would be considered as "scheduled" as she was "under doctor's care."

In an October 29, 1998 letter, Annette August-Taylor, an "investigating union official" regarding appellant's November 22, 1997 grievance for disparate treatment, asserted that Ms. Jamison stated that appellant had "trouble with language and other skills [such as] typing, computer skills that were not adequate for the job." Ms. Jamison also commented that she had difficulty understanding appellant's speech.

By decision dated February 18, 1999 and finalized February 19, 1999, the Office hearing representative affirmed the Office's April 30, 1998 decision, finding that appellant had failed to establish her allegations of harassment or that Ms. Jamison's dissatisfaction with her work performance constituted error or abuse. Appellant disagreed with this decision and in a May 5, 1999 letter, submitted by her authorized representative, requested reconsideration. She submitted additional evidence.⁶

In an undated transcript of an Equal Employment Opportunity (EEO) hearing, Peter Brownell, an employing establishment labor relations specialist, recalled that appellant approached him about Ms. Jamison's disapproval of her work performance and alleged that this was harassment. Mr. Brownell then spoke to Gary Martin, Ms. Jamison's supervisor, and recommended appellant's brief detail to another unit. Mr. Brownell explained that the separation

⁴ Appellant also submitted October 23 and December 15, 1997 letters from her former supervisors Lou Picciano and Michael Vass, who described appellant as capable, dependable and dedicated. Appellant's current supervisor, Elvin Kelson, submitted a September 21, 1998 letter stating that appellant independently and accurately completed all assigned tasks. These letters do not specifically address the July to October 1997 time period at issue in this case.

⁵ In October 23 and November 6, 1997 form reports, Dr. Anthony Fasano, a Board-certified attending family practitioner of professorial rank, diagnosed "anxiety disorder/situational" and held appellant off work through November 24, 1997. In a January 25, 1999 report, Dr. Fasano recalled that appellant first presented "with job related stress on October 23, 1997," with symptoms of "anxiety, stress, insomnia, appetite changes, and other problems...." Dr. Fasano diagnosed "situational anxiety/depression" and prescribed medication. He released her to return to work on November 24, 1997. Appellant presented again in April 1998 relating that she "was still having problems ... related to her supervisor...." Dr. Fasano again prescribed medication. In a November 4, 1997 report, Dr. George H. Lawrence, an attending clinical psychologist, related appellant's account of racially motivated harassment by Ms. Jamison who "wanted a friend to get the position" appellant occupied. Dr. Lawrence diagnosed an "[a]djustment disorder with mixed emotional features." The record also contains a January 24, 1999 report by Steve Solow, a "licensed professional counselor." As Mr. Solow does not qualify as a physician under the Act for the purposes of this case, his opinion is of no probative medical value. *See* 5 U.S.C. § 8103. Appellant also submitted copies of medical bills.

⁶ Employing establishment forms show that appellant completed a basic computer skills course from July 16 to September 10, 1993, a wordperfect class from January 27 to May 21, 1994, and a Word 6.0 training class from January 20 to April 4, 1997. These forms do not concern the period from July to October 1997 when appellant was under Ms. Jamison's supervision.

of an employee and manager in possible conflict was not in itself unusual. Mr. Martin testified that when Ms. Jamison reported appellant's poor performance to him prior to the detail, he suggested the computer and secretarial classes, and concurred with appellant's detail "so things could cool down."

Kevin Clark, one of appellant's coworkers, responded "yes" to the question "[d]id you ever witness Rosalind Jamison talking in an unprofessional ... hostile, angry type of manner to [appellant]? Mr. Clark noted that this occurred "on "[m]ore than two, less than five" occasions, with Ms. Jamison's tone of voice a "little louder than normal," and that she used "hand motions." Mr. Clark testified that he did not see Ms. Jamison speak in this manner to Ms. Morris or Joyce Page, another coworker. Mr. Clark noted that all employees under Ms. Jamison had to notify her of their whereabouts during the first three to four years of employment, then she would "mellow out." In answer to the question "Did you perceive Rosalind [Jamison] as being abusive in her power of authority?" Mr. Clark said "yes," in that she "overstepped her boundaries as a manager on more than one occasion."

By decision dated September 10, 1999, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that the EEO transcript was too vague to establish appellant's claims of harassment or any specific incident of error or abuse. The Office also found that although Mr. Clark responded "yes" to the question regarding whether Ms. Jamison spoke to appellant in a hostile or angry manner, Mr. Clark "did not describe any specific work-related incident or event, nor did he give the time and date" of any alleged incident.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

Appellant alleges that she sustained a disabling emotional condition due to factors of her federal employment. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. A claimant's perceptions and feelings regarding work factors, in the absence of corroborating evidence, are not compensable.⁷ When working conditions are alleged as factors in causing 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.⁸ When a claimant fails to implicate a compensable factor of employment, as in this case, the Office should make a specific finding in that regard.

In this case, appellant attributed her condition to an alleged series of incidents with Ms. Jamison from July through October 1997 concerning her work performance. She specifically alleged that on August 6 and September 22, 1997, Ms. Jamison instructed her to seek

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *See Barbara Bush*, 38 ECAB 710 (1987).

another position as her work performance as deficient, accused her of impropriety on September 10, 1997 regarding routing a customer inquiry, instructed her regarding how to obtain branch address information on September 12, 1997, criticized her on September 19, 1997 regarding not answering a telephone, and on October 6 and 8, 1997 reiterated her policy of having employees report there whereabouts directly to her.

The Board notes that Ms. Jamison's October 23, 1997 statement and supporting examples of appellant's work generally support that these incidents occurred on or about the dates alleged. The Board finds, however, that these incidents concern Ms. Jamison's assessments of appellant's performance, which is an administrative matter not in the performance of appellant's duties.⁹ 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.¹⁰ Appellant has not submitted sufficient evidence in corroboration of her claim to establish that the employing establishment erred or acted abusively with regard to these assessments.

Appellant also generally attributed her condition to a pattern of harassment and discrimination by Ms. Jamison, her supervisor. Specifically, she alleged that on July 28, August 13 and September 18, 1997, Ms. Jamison yelled at her and made sarcastic remarks, followed her with an angry expression on September 26, 1997 and singled her out by requiring her to report her whereabouts. The Board has long held that for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹¹ The Board finds that appellant failed to submit evidence to corroborate the incidents of alleged harassment, including that Ms. Jamison yelled at or threatened her, or treated her disparately by requiring her to report whenever she left the office.

The Board notes that Ms. Jamison provided a detailed account of events, which generally contradicted appellant's interpretations. While the testimony of Mr. Clark, appellant's co-worker, generally supports that Ms. Jamison was unprofessional to appellant, he did not corroborate any of the incidents specifically alleged by appellant, or provide a date or detailed description for any incident of hostility or abuse of authority. The testimony of Mr. Brownell and Mr. Martin indicates that there was some sort of conflict between Ms. Jamison and appellant, but again no dates or descriptions of specific incidents were provided. The only incidents in this case that are accepted as factual are the administrative matters concerning performance assessments described above, that are not within the performance of appellant's assigned duties and do not constitute compensable factors of employment.

⁹ *Michael Thomas Plante*, 44 ECAB 510 (1993); *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁰ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ *See Mary A. Sisneros*, 46 ECAB 155 (1994).

Consequently, appellant had failed to establish that she sustained an emotional condition in the performance of duty as she submitted insufficient evidence to establish a compensable factor of employment.¹²

The decisions of the Office of Workers' Compensation Programs dated September 10 and February 18, 1999 and finalized February 19, 1999 are hereby affirmed.

Dated, Washington, DC
March 29, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² As appellant failed to establish a compensable factor of employment, the medical record need not be addressed. *Margaret S. Krzycki*, 43 ECAB 384 (1992).