U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LISA L. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Palatka, FL

Docket No. 00-32; Submitted on the Record;
Issued May 21, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition causally related to her federal employment.

On November 19, 1998 appellant, then a 31-year-old letter carrier, filed a claim alleging that she suffered from severe stress arising in her federal employment. Appellant stated that she began work at the employing establishment in February 1998 and confronted pressure each day on the job. A physician first treated her for "severe stress" on August 24, 1998. Appellant was also treated with antibiotics, which caused a reaction for which she missed five days of work and was charged leave without pay for 40 hours. Appellant noted that, under her original supervisor, Loreili Brailey, she did not feel pressure. However, a new management team started several months later that "badgered" her about her overtime requests. Appellant stated that under supervisor Bryant Oxendine she felt an increasing urgency to perform at work, which lead to anxiety attacks and crying episodes. Appellant noted that her condition worsened during the month of October, during which time her medication was increased. She contended that she was not allowed to estimate her work time without a confrontation with her supervisor and that she felt constant pressure to "measure up." Appellant noted that she had twisted her foot while delivering mail and, when she finished her route, there was not a supervisor around to report the injury. Appellant received a letter of warning for failure to follow safety procedures, which she indicated was removed following a grievance arbitration. She alleged that Mr. Oxendine was demeaning and degrading to her while she was on limited duty and that he exhibited no compassion or consideration of her foot injury. She stopped work on November 7, 1998.

Mr. Oxendine, supervisor of customer services, submitted a statement responding to appellant's allegations. He noted that appellant was not proficient in estimating her need for additional time to complete her work. Mr. Oxendine stated that employee's had not been required by previous supervisors to account for their work hours or provide management with any type of estimate for the work performed. He stated that he worked with appellant to coach

her in the proper manner to estimate her time and complete required postal forms. Mr. Oxendine noted that, when appellant injured her foot, she failed to contact him on the day of the accident. He issued a letter of warning for failing to report the accident as required. Management withdrew the letter of warning after mutual agreement during a grievance procedure to provide appellant an opportunity to work and not be pressured by any existing disciplinary action. Mr. Oxendine stated that he observed appellant crying on October 30, 1998 and went to speak with her in a training room so they could have some privacy. He noted that appellant could speak to him about any problems she was having or speak with an EAP (Employee Assistance Program) representative. On November 7, 1998 appellant returned from her street route crying and reported that she had almost hit a kid. She advised Mr. Oxendine that she could not continue work, as she was too upset. Appellant declined his offer to drive her home and left the building.

By decision dated January 5, 1999, the Office of Workers' Compensation Programs denied appellant's claim. The Office found that appellant failed to demonstrate administrative error in actions taken by her supervisors and that the evidence was insufficient to substantiate her allegations.

On January 14, 1999 appellant requested an oral hearing before an Office hearing representative. Following a preliminary review of the record, on May 24, 1999 the Office hearing representative set aside the January 5, 1999 decision and remanded the case for further development. It was noted that further evidence was required on appellant's allegation that she was required to work outside her physical restrictions following her September 19, 1998 foot injury and whether Mr. Oxendine denied appellant's request for leave to see her dentist on August 24, 1999.[1]

On June 23, 1999 Mr. Oxendine provided a statement, in which he denied appellant's allegation that she was denied leave for an emergency dental appointment on August 24, 1998. He noted that she was asked if she could postpone her appointment until another time and that appellant responded that she would try to make another appointment. He stated that at no time was appellant denied sick leave to go to the dentist. Mr. Oxendine also controverted appellant's allegation that she was required to work outside her physical limitations. He noted that his work assignments to appellant were within her restrictions. Mr. Oxendine commented that appellant was subject to crying while on the workroom floor for unknown reasons and that no grievance had ever been filed with regard to being denied leave to visit her dentist or for working outside her physical restrictions.

By decision dated August 10, 1999, the Office denied appellant's claim. The Office found that the evidence of record failed to establish that leave was improperly denied or that the employing establishment made appellant work outside her established work restrictions.

The Board finds that appellant has failed to establish that she sustained an emotional condition arising out of her federal employment.

[1] The hearing representative found that appellant's reaction to a November 7, 1998 confrontation with a coworker constituted a compensable factor of employment.

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 coverage of workers' compensation. When disability results from an emotional reaction to the employee's regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act. The disability is not covered, however, when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feelings of job insecurity or the desire for a different job, promotion, or transfer do not constitute personal injury sustained in the performance of duty.[2]

As a general rule, an employee's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.[3] Administrative and personnel decisions are generally related to the employment but they are functions of the employer and not duties of the employee.[4] The Board has held, however, that administrative and personnel matters will be considered as an employment factor where the evidence of record discloses error or abuse on the part of the employing establishment.[5] In determining whether the employing establishment has erred or acted abusively, the Board will examine the record to determine whether agency personnel acted reasonably.[6]

In this case, appellant has alleged that she was improperly denied leave on August 24, 1998 to see her dentist. Although the handling of leave requests and attendance matters are generally related to the employment, the Board has held that they are administrative functions of the employer and not duties of the employer.[7] The evidence of record is insufficient to establish appellant's allegation that she was denied leave for an emergency dental visit, as alleged. Rather, it appears that appellant was requested to postpone her appointment and that she indicated that she would try to make another appointment. The record does not establish a compensable factor in this regard.

Appellant also alleged that she was assigned work that exceeded her physical limitations. The employing establishment refuted this allegation, with Mr. Oxendine noting that appellant's job assignments where made in conformance with restrictions imposed by her physician. The evidence of record is insufficient to establish that the employing establishment erred or imposed limitations exceeding appellant's physical limitations.[8]

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[2] *See Helen P. Allen*, 47 ECAB 141 (1995); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *See Janet I. Jones*, 47 ECAB 345 (1996).

[4] *See Alberta Kinloch-Wright*, 48 ECAB 459 (1997).

[5] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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

[7] *See Dinna M. Ramirez*, 48 ECAB 308 (1997).

[8] *See Donna J. DiBernardo*, 47 ECAB 700 (1996).

With regard to the letter of warning, which was removed during the grievance process, appellant's supervisor noted that it had been issued as appellant failed to timely report an injury, as required. He subsequently removed the letter of warning by mutual agreement to provide appellant the opportunity to continue working and not be pressured by any disciplinary action. There is no evidence that the employing establishment erred in issuing the letter of warning to appellant and its removal by mutual agreement does not constitute an admission of wrongdoing by either party.[9] Appellant has not established a compensable factor pertaining to the issuance or removal of the letter of warning.

Appellant also alleged that a substitute supervisor had a "negative" outlook and that Mr. Oxendine's discussions pertaining to her performance or requests for overtime were unwarranted and she was in fear of being reprimanded. The Board has held that a claimant's feelings or perceptions that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, abusive. This principle recognizes that a supervisor or management in general must be allowed to perform their duties and that, in the performance of such duties, employees will dislike actions taken or decisions made. However, mere dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents complained of were unreasonable. Appellant has not made that showing in this case. The fact that she may have occasionally cried while at work does not establish error or abuse by her supervisors.

Appellant alleged that on November 7, 1998 a coemployee, Julie Back, was asked to carry 30 minutes of the auxiliary route and had accused appellant of "not doing your damn job." 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 a compensable factor.[10] In *Alfred Arts*,[11] the Board noted that the employee's reaction to coworkers comments such as "you might be able to do something useful" and "here he comes" did not rise to compensable factors of employment. Similarly, in this case, the Board finds that the statement of appellant's coworker does not rise to a compensable factor. Appellant has not adequately explained how the comment by Ms. Back would rise to the level of verbal abuse and her mere dislike or embarrassment by the comment is a self-generated reaction. The Board will modify the finding of the Office as to finding this a compensable factor of employment.

[9] *See Constance I. Galbreath*, 49 ECAB 401 (1998).

[10] *See Christophe Jollicoeur*, 49 ECAB 553 (1998); *Mary A. Sisneros*, 46 ECAB 155 (1994).

[11] 45 ECAB 530 (1994).

The August 10, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed, as modified.

Dated, Washington, DC
May 21, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member