

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRMA J. WOLINSKI and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 00-2236; Submitted on the Record;
Issued November 16, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition while in the performance of her duties.

On September 18, 1999 appellant, then a 48-year-old mailhandler, filed an occupational disease claim asserting that racial harassment since 1995 had caused her to have emotional stress, terrible headaches and memory losses. She stopped work in March 1999.

To support her claim, appellant submitted written statements to the Office of Workers' Compensation Programs. She implicated racial and sexual harassment, unfair treatment, retaliation for whistle blowing, abusive language and name calling. She pursued her complaints through the Equal Employment Opportunity Commission (EEOC). Appellant initially stated that no witnesses would stand up for her; no one wanted to come forward. On April 21, 2000, however, she advised that coworkers were now coming forward and telling her that they would back her up. One said he would go to court for her.

Appellant submitted, among many other things, personal notes describing incidents dating back to 1994. She submitted copies of her medical records, including a psychiatric fitness-for-duty evaluation. Her attending psychiatrist diagnosed major depression on April 30, 1999. Appellant also submitted EEOC documents.

The employing establishment responded to appellant's allegations on December 3, 1999.

In a decision dated May 12, 2000, the Office denied appellant's claim on the grounds that she failed to substantiate her claim by a preponderance of the evidence.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of her duties.

As the Board observed in the case of *Lillian Cutler*,¹ workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

Error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.² Actions by coworkers that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty.³

Perceptions alone, however, are not sufficient to establish entitlement to compensation. 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.⁴ Thus, for harassment or discrimination to give rise to a compensable disability, there must be evidence that harassment or discrimination did in fact occur.⁵

The Board has reviewed the evidence submitted in this case. Although appellant alleged racial and sexual harassment, unfair treatment, retaliation for whistle blowing, abusive language and name calling, the only evidence submitted to support her allegations are her own statements and notes, which show only her own perception of events. Notwithstanding her April 21, 2000 letter advising that coworkers were now willing to come forward, the record contains no statements from other employees to corroborate or substantiate any specific allegation of harassment. Appellant has pursued her complaints through the EEOC process but has produced no formal finding or final decision to show that harassment did in fact occur, as alleged.

¹ 28 ECAB 125 (1976).

² *Margreate Lublin*, 44 ECAB 945 (1993).

³ See *David W. Shirey*, 42 ECAB 783, 795 (1991) (holding that the claimant had alleged a compensable factor of employment by asserting that he was called "sucker" by coworkers, as he encountered this condition in the performance of his regular or specially assigned duties).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

Appellant has the burden of proof in this case to support her allegations with probative and reliable evidence.⁶ Because she has failed to submit such evidence, the Board will affirm the Office's May 12, 2000 decision denying her claim.

The May 12, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 16, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ The jurisdiction of the Board, as an appellate body, is limited to reviewing the evidence that was in the case record at the time of the Office's May 12, 2000 decision. 20 C.F.R. § 501.2(c).