

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VANESSA L. DAVIS and U.S. POSTAL SERVICE,  
POST OFFICE, Long Beach, CA

*Docket No. 01-301; Submitted on the Record;  
Issued November 14, 2001*

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DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty.

On September 3, 1999 appellant, then a 42-year-old part-time flexible letter carrier, filed a notice of occupational disease and claim for compensation alleging that she suffered from anxiety attacks on August 9 and 31, 1999 after being harassed at work.<sup>1</sup>

Appellant alleged that her supervisor, John Smullen, yelled, cursed and verbally abused her in front of coworkers, culminating in an anxiety attack at work on August 9, 1999 when paramedics were called to assist her. She also alleged that she had an anxiety attack on August 31, 1999 and was found sitting in her car on the side of the freeway. With respect to the August 31, 1999 incident, appellant stated that Mr. Smullen had yelled at her for not following instructions.

Appellant came under the care of Dr. Debra Reigal who advised that appellant could not be around her supervisor. Appellant did not return to work and was later terminated from her position.

In support of her claim appellant submitted witness statements from David Noesen, Yong Bonner, Jose Perez, Heather Clokey and Eric LaMotte. Mr. Noesen stated that he had observed appellant after two conversations with her supervisor on July 6 and 22, 1999, at which time appellant appeared "shaken and distressed to the point of tears." Ms. Bonner stated that appellant came to her and complained that Mr. Smullen was harassing her. She opined that Mr. Smullen's "Gomer Pyle attitude" would cause anybody to stress out. Mr. Perez described his difficulties with appellant's supervisor but did not address the specifics of appellant's

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<sup>1</sup> Appellant underwent gallbladder surgery on February 18, 1999. She returned to work on March 15, 1999 in a temporary light-duty assignment, with no lifting greater than five pounds.

allegations. Similarly, Ms. Clokey and Mr. LaMotte described the events of appellant's anxiety attack at work, stating that appellant could not breathe. They indicated that the anxiety attack was brought on by a conversation with Mr. Smullen but did not provide the details of any conversation they had witnessed.

Appellant provided copies of an August 12, 1999 notice of light-duty termination, an August 13, 1999 light-duty request and a September 28, 1999 letter from the employing establishment denying an accommodation requested by Dr. Reigal.

The employing establishment submitted a statement indicating that on August 9, 1999 appellant was one of six employees who received direction from Mr. Smullen regarding the use of "RED CARD" quality control procedure. It was noted that "there was nothing unusual about the supervisor's discussion with this employee. She was not being counseled or reprimanded."

In a December 20, 1999 statement, Mr. Smullen noted several incidents during the months of June and July 1999 when appellant was sent home because there was no work within her medical restrictions available. He denied having harassed appellant during the dates in question. Mr. Smullen specifically stated:

"On August 31, [1999] 20 minutes after [appellant] had clocked in for work and had been given instructions on what to do [she] was standing at a supervisor's desk. In a normal tone, I asked her what she had been doing during the last 20 minutes, as she was not at her work assignment. She responded that she was talking to supervisor Hodge. I then asked her about what, she stated it was private. [W]ithout using any loud or profane language, I told her I didn't want that I didn't want to hear 'that.' I wanted to know if she had completed her assignment of delivering one Express mail item to the school district. She then stated that she hadn't, so I then instructed her to go out and deliver the Express she had been assigned to deliver. She just stood and looked at me, then supervisor Hodge told her to go out and deliver the Express item and she did so. I had no further interaction with [appellant] that day."

In a decision dated January 10, 2000, the Office of Workers' Compensation Programs denied compensation on the grounds that appellant failed to establish a compensable factor of employment and, therefore, failed to establish that she sustained an emotional condition in the performance of duty.

Appellant requested a hearing, which was held on June 27, 2000.

On July 12, 2000 appellant submitted records from the employee assistance program indicating that she sought counseling on August 3, 1999 because she was frustrated that management was not offering alternative duties for her to perform in light of her medical status and restriction to light duty following surgery. It was also noted that appellant suffered an anxiety attack at work on August 17, 1999 and that she had an anxiety attack on August 31, 1999 "on the way to work."

Appellant also submitted treatment notes from Dr. Debra Reigel dated September 22 and 29, 1999, indicating that she was treated for anxiety disorder, acute stress and depression.

Dr. Reigel noted that appellant was “having difficulty with requesting no contact with her supervisor.”

The record further contains grievance settlements dating October 28 and June 29, 2000 and October 18, 1999. Those settlements state that “without prejudice to either party’s position” appellant would be paid a total of 27.25 hours of administrative leave for lost hours during the week of July 23 through August 8, 1999, April 8 through 21 and April 22 through May 5, 2000.<sup>2</sup>

In a September 12, 2000 decision, an Office hearing representative affirmed the Office’s January 10, 2000 decision.

The Board finds that appellant did not sustain an emotional condition in the performance of duty.

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>3</sup> Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the employee’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>4</sup>

Workers’ compensation law is not applicable 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 the coverage of workers’ compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees’ Compensation Act.<sup>5</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers’ compensation because it is not considered to have arisen in the course of the employment.<sup>6</sup>

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<sup>2</sup> Appellant also provided a character witness statement from a previous postal appointment.

<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

In this case, appellant contends that she was harassed by her supervisor on August 9 and 31, 1999. Although appellant submitted several witness statements describing an anxiety attack she sustained at work and further attesting to problems with the supervisor in question, the statements do not specifically address the alleged dates or interactions she had with her supervisor on those dates. They did not state the details of any specific conversations between appellant and Mr. Smullen. As such, the witness statements do not corroborate appellant's allegations of harassment. In addition, appellant's supervisor explained that on August 9, 1999 appellant was one of the employees who received instructions regarding quality control procedure but that appellant had not been reprimanded in any manner. He further explained that on August 31, 1999 he gave appellant work instructions which appellant did not follow. There is no evidence that appellant's supervisor acted abusively or erred in his managerial duties on the August dates in question. 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 at times dislike actions taken. However, mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>7</sup>

Similarly, the Board finds that appellant's participation in the employee assistance program fails to establish harassment. A review of the EAP evidence reveals that appellant sought counseling based on her perception that the employing establishment was ignoring her medical problems and that her supervisor was mistreating her. Appellant also alleged to the EAP that she was not being allowed to work the number of hours she desired. Contrary to appellant's complaints, however, the Board has held that a claimant's desire to work in a particular environment is not a work factor.<sup>8</sup> The Board also notes that the counseling with the EAP adds no more factual basis to appellant's claim for an emotional condition in the performance of duty as her allegations are unsubstantiated.<sup>9</sup>

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.<sup>10</sup> The mere perception of harassment or discrimination is not sufficient to establish a compensable factor of employment.<sup>11</sup> A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the FECA absent objective evidence that the interaction was, in fact, abusive.<sup>12</sup> While appellant has submitted allegations that her supervisor abused her

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<sup>7</sup> See *Constance I. Galbreath*, 49 ECAB 401 (1998).

<sup>8</sup> See *Clara T. Norga*, 46 ECAB 473 (1995).

<sup>9</sup> Appellant filed several grievances with regard to the number of hours she was supposed to work. She was awarded 27.25 hours of administrative leave per a settlement agreement but the employing establishment did not concede any wrongdoing in scheduling appellant's part-time work hours within her medical restrictions. The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment. *Mary L. Brooks*, 46 ECAB 266 (1994).

<sup>10</sup> *Parley A. Clement*, 48 ECAB 302 (1997); *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>11</sup> *Id.*

<sup>12</sup> *Daniel B. Arroyo*, 48 ECAB 204 (1996).

to the point of tears on July 6 and 22, 1999, there is nothing but a general allegation of harassment of record. There is no specific evidence of any harassment in this case.

Because appellant has failed to show error or abuse by her supervisor as alleged, she has not established a compensable factor of employment. Accordingly, the Office properly denied her claim for an emotional condition.

The September 12 and January 10, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
November 14, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member