U .S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA L. SUMMA and DEPARTMENT OF THE NAVY, FLEET INDUSTRIAL SUPPLY CENTER, Honolulu, HI

Docket No. 00-2603; Submitted on the Record;
Issued October 24, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

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

On April 21, 2000 appellant, then a 41-year-old mobile equipment servicer, filed a claim for work-related stress due to her supervisor yelling at her because he wanted to use a vehicle that was not in working order. Appellant stated that her hands "cracked" from the stress and she developed headaches, heartburn, sleeplessness and rash. Appellant stopped working on April 19, 2000 and returned on April 24, 2000.

In a notice dated April 7, 2000, Wayne Tsuda, the head of the shipping division, informed appellant that he proposed to suspend her for two calendar days because she failed to complete a training assignment. He stated that on April 2, 2000 appellant attended the "CPR [cardiopulmonary resuscitation]" test in the morning but did not attend the first aid class in the afternoon. By letter dated April 18, 2000, the employing establishment suspended appellant on April 26 and 27, 2000.

In a statement dated April 24, 2000, appellant's supervisor, Gilbert Ishihara, noted that on April 3, 2000 he received a call to request the use of the VIP mini van. He looked at the reservation sign-out board, saw no reservations on the requested dates of April 6 and 7, 2000, and made reservations for those days. Later, while he was talking to one of his employees in the transportation section, appellant saw the entry on the board and said in a very loud tone of voice, "you cannot lend the van to anybody because I'm going to take it in for repairs because the brakes are bad." He stated that appellant was 15 to 20 feet away from where he was standing and he "replied in a voice louder than usual so [he] could be heard clearly." Mr. Ishihara stated that he told appellant that there were no entries on the board and that was why he made the reservation for use of the van. He stated that appellant again replied loudly, "well you cannot lend it anyway because I already made the appointment for the brakes."

Mr. Ishihara related that he told appellant that he was supposed to be notified if vehicles were unsafe to drive and that an entry should be made on the board if a vehicle were unavailable due to repairs. He stated that he needed to make other arrangements and called the customers and told them the van was not available those days. Mr. Ishihara stated that "these incidents have been ongoing," that he had to tell appellant about the procedures which she had to follow and that she should not make decisions on her own.

In a report dated April 20, 2000, Dr. John R. Hannon, Board-certified in preventive medicine, diagnosed "alleged job stress" and stated that appellant injured herself on April 3, 2000, and should be off duty from April 19 through 21, 2000.

By decision dated June 15, 2000, the Office of Workers' Compensation Programs denied appellant's claim, stating that the evidence of record was insufficient to establish that the employment factor arose out of and in the course of employment and there was no evidence that appellant's supervisor acted erroneously or abusively.

The Board finds that appellant has not established that she sustained an emotional condition while 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.[1] On the other hand, the disability is not covered where it results from such factors as an 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.[2]

Verbal altercations and difficult relationship with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment.[3] Verbal altercations may constitute harassment, but for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[4]

An employee's complaints concerning the manner in which a supervisor performs his duties or exercises his supervisory discretion falls, as a rule, outside the scope of coverage provided by the Act.[5] This principle recognizes that supervisors or managers in general must be

[1] 5 U.S.C. §§ 8101-8193.

[2] *Clara T. Norga*, 46 ECAB 473, 480 (1995); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[3] *Christopher Jolicoeur*, 49 ECAB 553, 556 (1998).

[4] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[5] *Supra* note 3 at 557.

allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[6]

In this case, appellant alleged that she sustained emotional stress when Mr. Ishihara raised his voice to her after she said a vehicle he wanted to use was not in working order. Mr. Ishihara stated that appellant had failed to record on the sign-out board or inform him that the vehicle was unavailable. He added that he spoke loudly to explain that to appellant because she was standing 15 to 20 feet away.

The exchange between appellant and her supervisor regarding the van is an administrative matter. Appellant has not shown that Mr. Ishihara acted unreasonably or abusively or that he yelled or spoke inappropriately to her. Moreover, appellant's suspension is also an administrative matter and appellant has not shown that management acted unreasonably or abusively in taking this action.[7] Since appellant did not establish a compensable factor of employment, she has failed to establish her claim. The medical evidence need not be addressed.[8]

The June 15, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.[9]

Dated, Washington, DC
October 24, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[6] *See Alfred Arts*, 45 ECAB 530 (1994).

[7] *See Alice M. Washington*, 46 ECAB 382, 387-89 (1994).

[8] *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).

[9] On July 14, 2000 appellant requested reconsideration of the Office's decision and submitted additional evidence. However, the Office did not review this evidence prior to appellant's appeal to the Board. The Board therefore does not have jurisdiction to consider that evidence. *See Linda D. Perren (Larry P. Perren)*, 49 ECAB 246, 247 n.5 (1997).