

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTINA A. HERNANDEZ and U.S. POSTAL SERVICE,
DOWNTOWN CARRIER ANNEX, Los Angeles, CA

*Docket No. 01-483; Submitted on the Record;
Issued October 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied her request for reconsideration.

On October 22, 1999 appellant, then a 44-year-old letter carrier, filed a claim for panic attacks and depression. She alleged that her condition was due to being asked to do more work and having to appear before an administrative law judge in relation to an equal employment opportunity complaint. Appellant noted that, as a letter carrier, she was to do the work as fast as possible, with additional pressure when asked to do more work in the same amount of time.

On May 6, 1999 appellant's supervisor reviewed her sick leave record with her, which was due to a prior worker's compensation claim. On May 27, 1999 she was assigned overtime on another route but her supervisor then took the overtime away. Appellant commented that this caused a problem with conflicting orders as she had already done the work. On June 15, 1999 she was not allowed to use the telephone to call the union to inform them of cancellation of an appointment. Appellant stated that on June 28, 1999, her supervisor ordered her to pull her bins more often than her coworkers and more than normal for her route. On July 12, 1999 her supervisor stated that appellant had exceeded the delivery time on her route on July 10, 1999 by 10 minutes. Appellant stated that she had requested the additional time before leaving on her route and the supervisor waved as if he had approved the extra time.

On July 29, 1999 appellant was scheduled for overtime the next day but she discovered she had been removed from the overtime list on the grounds that she had accumulated too much overtime. She related that on August 12, 1999, she was late to work due to a traffic accident and was required to submit a slip to revise her schedule but alleged that a coworker in the same situation was not required to do so.

On August 21, 1999 appellant was instructed to wait before delivering the route, was instructed to deliver within 8 hours and was written up when she was 30 minutes late. She noted

one occasion when she requested paperwork in relation to another compensation claim which had been sent to a supervisor without her knowledge.

Appellant stated that she worked overtime on September 25, 1999 but had to use an employing establishment form because her time card was not working. Her supervisor questioned her use of the form. Appellant claimed that she had not been paid for the overtime.

On September 30, 1999 appellant called in sick after an interview with an administrative law judge but was noted as absent without leave even though she had leave available. She submitted a form to correct the error but stated that she had not been paid for that day.

On October 14, 1999 appellant met with labor relations and was instructed to report at 6:00 a.m. on her day off. She stated that when she did report to work, one of the supervisors stated that appellant had not been instructed to come to work and refused to change the schedule for her. Appellant stopped work on October 14, 1999.

Appellant indicated that she had symptoms of being scared, shaky, emotions out of control, sleeplessness, trouble in breathing, loss of appetite and loss of concentration. She stated that she had begun to recover from a prior stress case and had returned to work in September 1998. When appellant's symptoms began again, she started to have panic attacks once a week, increasing, by October 1999, to an almost daily occurrence.

In response, Brigitte Williams, manager of customer service at the employing establishment, indicated that appellant was a fast worker, occasionally returning to the employing establishment early after completing her assignment and leaving in her personal car. Ms. Williams alleged that appellant occasionally would fail to complete all four required clock rings on the time clock. Ms. Williams indicated that the discussion of appellant's sick leave on May 6, 1999 was part of the employing establishment's policy to review attendance records with employees every three months. With regard to the telephone call on June 15, 1999, employees were allowed to make telephone calls in emergencies or with a supervisor's approval after a request to make a call. She stated that appellant did not request permission to make a telephone call on the day in question. With regard to the overtime schedule, appellant was under a contractual obligation to make sure all workers shared equally in overtime hours which required her to monitor overtime hours carefully. Ms. Williams would inform supervisors which employees had excessive overtime hours and instruct them not to give those employees additional overtime until they were even with other employees. She stated that all employees were required to report when they were running late and to request a revised schedule if they exceeded the five-minute leeway, including the coworker cited by appellant.

In regard to the October 14, 1999 incident, Ms. Williams stated that when she arrived at work, she was informed that appellant had to attend a hearing at Labor Relations. Appellant's supervisor indicated that appellant was not scheduled to work that day. Ms. Williams contacted Delores Lopez, a supervisor who appellant stated instructed her to come in to work. Ms. Lopez responded that she instructed appellant to contact her supervisor as she was not scheduled to come in. Ms. Williams then contacted Labor Relations which indicated that the interview was to be a telephone interview that appellant would conduct from home. It was noted that appellant would be paid for the time she was to be on the telephone. Ms. Williams instructed appellant to

return home. She related that appellant wanted to go to Labor Relations to be on the telephone interview. Ms. Williams indicated that appellant would not be allowed to stay on the clock for an 8-hour day for a 30-minute telephone conversation. She told appellant to go home as she was not scheduled to work that day.

Leon Campbell, appellant's supervisor, stated that he reviewed appellant's attendance when she returned to work after sick leave as part of his procedure to notify employees of an unscheduled absence trend. With regard to the May 27, 1999 incident, Mr. Campbell reported that appellant was assigned to case and carry one route and case another route on overtime. He stated no time was taken away from appellant and she was paid for all the time she worked. In response to appellant's allegations regarding an incident on June 28, 1999, Mr. Campbell stated that appellant was not at work on that date as it was not her scheduled workday. As to the July 12, 1999 incident, he stated that he only sought to ask appellant why she went over her scheduled time on July 10, 1999 by 10 minutes. Mr. Campbell stated that on August 21, 1999, he asked appellant to wait for all first class mail that could connect with her route prior to her departure for deliveries. He pointed out that appellant left for deliveries at 9:52 a.m., only two minutes later than the route schedule departure time. Mr. Campbell stated that he had no records to substantiate appellant's claim that she was written up for returning 30 minutes late that day. He noted that the records showed appellant returned to the employing establishment before 2:00 p.m. that day and clocked out from work at 2:50 p.m. Mr. Campbell reported that on September 25, 1999, time records showed the clock rings appellant had made with her time card. He stated that appellant failed to enter all her clock rings that day because she finished her assignment early. Mr. Campbell indicated that appellant was paid for all the time she worked. He reported that appellant was paid sick leave for September 30, 1999. On October 14, 1999 Mr. Campbell indicated that appellant approached Ms. Lopez, who was not her immediate supervisor, on October 13, 1999 and mentioned the meeting with Labor Relations. Ms. Lopez instructed appellant to call him the next day for instructions. Mr. Campbell stated that appellant failed to do as she was instructed.

In an April 17, 2000 decision, the Office denied appellant's claim for compensation on the grounds that she was not injured in the performance of duty as none of the factors she alleged as a cause of her condition were compensable factors of employment.

In an undated letter, appellant submitted medical evidence and requested reconsideration. In a November 14, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was immaterial and therefore insufficient to warrant review of the prior decision.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.¹ Where the disability results from an emotional reaction to regular or

¹ 5 U.S.C. § 8101 *et seq.*

specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act.³ In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁴

Appellant made numerous allegations that she claimed caused her panic attacks and depression. The discussion of her sick leave on May 6, 1999 is an administrative matter unrelated to the performance of her assigned duties. Appellant contended that she was not paid appropriate overtime or given appropriate sick leave on a few occasions. Her supervisor indicated that appellant was paid all appropriate overtime and given appropriate leave on September 30, 1999. Appellant has not established error or abuse by the employing establishment in addressing these administrative matters pertaining to her use of leave or overtime.

Appellant alleged that she was required to submit a request for a revised schedule when she was late one day while a coworker in the same situation was not required to do so. Ms. Williams indicated that everyone who was late was required to request a revised schedule, even the coworker cited by appellant. There is no evidence that appellant was subjected to abuse or disparate treatment. Appellant stated that on July 29, 1999 she was removed from an overtime assignment. Ms. Williams reported that she had a contractual obligation to assign overtime equally and appellant had more overtime hours than many other coworkers. She was therefore removed from the overtime assignment listings. The assignment of overtime is an administrative action. Appellant has not established that Ms. Williams' actions were in error or abusive.

The rules on the personal use of the telephone at the employing establishment pertain to an administrative matter, allowing use after requesting permission from a supervisor. Appellant has not established that she requested permission to use the telephone and was improperly denied such use. Appellant also did not establish that she was given extra assignments on June 28, 1999, as her supervisor indicated she was not at work on that day. Appellant contended that she

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

was required on August 21, 1999 to delay one hour in going out to deliver mail and, as a result, was a half hour late in returning for which she was written up. Mr. Campbell indicated that the delay was for an administrative reason, to make sure she had all the first class mail for her route. He indicated that appellant was only two minutes behind schedule when she left and returned in a little over four hours. He stated that she was not written up for being late. Appellant therefore, has not established that the August 21, 1999 incident occurred as she alleged. Mr. Campbell stated that on July 12, 1999, he only sought the reason why appellant was 10 minutes late in returning to the employing establishment. This was an appropriate administrative request. There is no evidence that this injury was abusive or done in error. The October 14, 1999 incident was not related to appellant's assigned duties but rather was related to a matter of where she was to be interviewed by Labor Relations. Ms. Williams acted in an administrative capacity in refusing to allow appellant to be on the clock for an entire day so that she could complete the interview when the option existed for the interview to be conducted by telephone from appellant's home. There is no evidence that Ms. Williams' action was taken in error or abusive. The allegations by appellant as the cause of her emotional condition have not been established as having occurred as alleged or involve administrative matters not related to her assigned duties. Appellant has not shown that the administrative actions taken were in error or abusive. Appellant has not established that she sustained an emotional condition in the performance of duty.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁷

In this case, appellant submitted medical evidence in support of her request for reconsideration. The issue in this case, however, was not whether appellant's condition was causally related to accepted compensable factors of employment, but whether any compensable factors of employment existed such as to show appellant's injury occurred within the performance of duty. Medical evidence therefore was not relevant to the issue involved in appellant's case. The Office properly denied appellant's request for reconsideration.

⁵ 20 C.F.R. § 10.608(b).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decisions of the Office of Workers' Compensation Programs dated November 14 and April 17, 1999 are hereby affirmed.

Dated, Washington, DC
October 22, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member