

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIM NGUYEN and U.S. POSTAL SERVICE,  
SANCHEZ ANNEX STATION, Santa Clara, CA

*Docket No. 01-505; Submitted on the Record;  
Issued October 1, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

On October 29, 1999 appellant, then a 44-year-old modified letter carrier, filed a claim for anxiety, stress and loss of sleep that she attributed to not having a regular job since her left foot injury in 1994, to not knowing what to do first when she was given two or three assignments and to the employing establishment charging her with being absent without leave (AWOL) after she filed Equal Employment Opportunity (EEO) complaints. In response to a request from the Office of Workers' Compensation Programs, appellant submitted January 16 and 17, 2000 statements further describing the factors and incidents of her employment to which she attributed her condition.

By decision dated June 5, 2000, the Office found that appellant had not established any compensable factors of employment.

By letter dated June 7, 2000, appellant requested reconsideration and submitted additional evidence. The Office elicited further information from appellant and from the employing establishment.

By decision dated September 2, 2000, the Office found that appellant had not established any error or abuse in employing establishment administrative or personnel actions, that she had not shown that her work tolerance limitations were exceeded, that her dissatisfaction with her position was not compensable and that she had not established the other incidents she cited.

The Board finds that appellant has not established that she sustained an emotional condition 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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation 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.<sup>1</sup> Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.<sup>2</sup>

Appellant's dissatisfaction with her job duties, of which 15 are listed in a March 7, 1997 rehabilitation reemployment offer, is not a compensable factor of employment.<sup>3</sup> While assignment of duties beyond an employee's work tolerance limitations can be a compensable factor of employment,<sup>4</sup> appellant has cited only two specific incidents, one on January 14, 2000 where she weighed a bundle she was assigned to handle at 12 pounds and one in May 2000, where she allegedly delivered express mail for 5 hours. Appellant does not explain how these assignments exceeded her work tolerance limitations, which, according to the employing establishment's March 7, 1997 offer, were lifting up to 25 pounds, standing 4 hours and walking 2 to 3 hours. Appellant's contention that casing mail required continuous standing for more than four hours is not specific as to the number of times or dates this allegedly occurred and is not substantiated.

Appellant alleges that the employing establishment's disciplinary actions, specifically a June 13, 1995 seven-day suspension for an unsafe act and a December 20, 1995 seven-day suspension for delay of mail, were erroneous or abusive. Although these suspensions were reduced to letters of warning and lost wages were repaid through the grievance process, such settlements are not sufficient to establish error or abuse.<sup>5</sup> Appellant also alleges that the employing establishment erroneously charged her with being AWOL, but has not established that this action was, as alleged, retaliation for filing EEO complaints, or that it was otherwise erroneous. Appellant has not shown error regarding her allegation that the employing establishment told her to bring documentation for her sick leave in January 2000.

Appellant also alleges that she was harassed by coworkers coming up behind her and scaring her by calling her names and that her supervisor verbally abused her by stating she was not her babysitter. Appellant's supervisor denied that she made this remark and, even if it were proven, appellant has not shown how such an isolated remark would rise to the level of verbal

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>3</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>4</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

<sup>5</sup> *Michael Thomas Plante*, *supra* note 2.

abuse.<sup>6</sup> The Board has held that actions of an employee's supervisor or coworkers which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, 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. Mere perceptions alone of harassment or discrimination are not compensable under the Act.<sup>7</sup> Appellant has not shown that coworkers intentionally scaring her was anything but her perception, especially as she noted that the noise from parcels striking a steel cage also scared her. Such noise to which appellant was subjected while performing her duties, could be a compensable employment factor, but appellant has provided no specific information as to when and how often this occurred.<sup>8</sup> Similarly, appellant has provided only one example of being confused by being given more than one assignment, stating that on May 20, 2000 her supervisor told her to deliver express mail 10 minutes after she told her to do the nixie. Appellant has not shown error in her supervisor's instructions, which are an administrative function of the employer.<sup>9</sup>

In summary, appellant has not substantiated any compensable employment factors. For this reason, it is not necessary to address the medical evidence.

The September 2 and June 5, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
October 1, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *Alfred Arts*, 45 ECAB 530 (1994).

<sup>7</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>8</sup> Appellant's burden of proof includes the submission of a detailed description of the employment factors or conditions he or she believes caused or adversely affected the condition for which compensation is claimed. *Effie O. Morris*, 44 ECAB 470 (1993).

<sup>9</sup> *Michael L. Malone*, 46 ECAB 957 (1995).