U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY E. BURGESS and U.S. POSTAL SERVICE,
MISSION PEAK CARRIER ANNEX, Fremont, CA

*Docket No. 00-594; Submitted on the Record;*
*Issued September 7, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On June 6, 1997 appellant, then a 51-year-old modified general clerk, filed an occupational disease claim asserting that harassment and discrimination at work caused her stress. She implicated the following: On April 30, 1997 her manager wanted her to work outside her assignment; on May 8, 1997 medical documentation, including a prognosis of her condition, was requested in violation of the Family Medical Leave Act (FMLA) and Privacy Act; her doctor's note was not accepted; on May 29, 1997 she had a "just cause" interview with her supervisor for inadequate medical documentation and failure to follow instructions; on May 30, 1997 her supervisor issued her a letter of warning; and also on May 30, 1997 there was another request for medical documentation. Appellant stated that she was stressed by her manager's demeaning attitude toward her.

On June 11, 1997 the manager replied that on April 30, 1997 he instructed appellant to answer telephones at the Irvington Station. Appellant's duties included answering the telephone. On May 8, 1997 appellant was requested to provide a medical update to find out if her conditions had changed after six years. Appellant provided a note on May 23, 1997 stating only that the doctor had seen her but not providing a medical update. On May 29, 1997 appellant's supervisor conducted a just cause interview for failure to follow instructions given to her in writing on May 8, 1997. On May 30, 1997 appellant received a letter of warning for failure to follow instructions. The manager denied threatening appellant with corrective and disciplinary actions. The manager denied discrimination and stated that other employees had been requested to provide medical updates. Disciplinary actions were for just cause and had been applied to other employees for the same or similar cause. He stated that disciplinary actions were applied progressively, that appellant was treated with dignity and respect at all times and that all of appellant's accusations claiming "stress" were false.

On August 5, 1997 appellant offered her rebuttal. On October 19, 1997 she further informed the Office that that her workstation was rearranged for no apparent reason and without consideration for her work-related carpal tunnel syndrome. She added that, when she submitted a report of hazard or unsafe condition or practice, her supervisor treated it as trivial and threatened to take further action against her. Another supervisor accused her of filing a false claim on her Form CA-1. Appellant stated that these incidents further justified her claim of stress and indicated that the entire current management was upholding the manager's harassment and discrimination against her.

On June 2, 1997 appellant filed an informal complaint of discrimination based on the May 30, 1997 letter of warning. On July 21, 1997 appellant was notified that the employing establishment had agreed to remove the letter of warning. On June 6, 1997 appellant filed an FMLA/Privacy Act appeal. On June 18, 1997 she filed a grievance. On August 9, 1997 she filed an Equal Employment Opportunity (EEO) complaint of discrimination against her manager on the basis of physical disability.

In a decision dated April 24, 1998, the Office of Workers' Compensation Programs denied compensation on the grounds that the evidence failed to demonstrate that the injury occurred in the performance of duty.

In a letter postmarked May 22, 1998, appellant requested an oral hearing before an Office hearing representative.

On April 27, 1999 appellant requested reconsideration. She complained that correspondence from her doctor was not considered or mentioned by the Office, that her manager's failure to reply to an Office request for additional information meant that the Office could accept appellant's allegations as factual, that her manager's request for a prognosis was a Privacy Act violation and that management moved her workstation without consideration of her bilateral wrist condition, which condition the Office accepted.

After a hearing was scheduled for June 17, 1999, appellant wrote to explain on May 30, 1999 that she was seeking reconsideration, not a hearing. The hearing was cancelled.

In a decision dated August 5, 1999, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

The Board finds that the evidence of record is insufficient to establish that appellant sustained an emotional condition while in the performance of duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to an employee's employment.[1] An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,[2] neither do

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Joseph F. McHale*, 45 ECAB 669 (1994).

disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct;[3] investigations;[4] determinations concerning promotions and the work environment;[5] discussions about an SF-171;[6] reassignment and subsequent denial of requests for transfer;[7] discussion about the employee's relationship with other supervisors;[8] or the monitoring of work by a supervisor.[9]

Nonetheless, the Board has held that 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.[10] 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.[11]

In this case, appellant attributes her stress primarily to the actions of her manager and also to the actions of supervisors. As a general matter, her emotional reaction to such lies outside the scope of coverage of workers' compensation. To establish a compensable factor of employment, appellant must do more than allege her disagreement with these actions. She must substantiate error or abuse with probative and reliable evidence. The record in this case contains no such evidence. Appellant filed an informal complaint of discrimination, an FMLA/Privacy Act appeal, a grievance and an EEO complaint of discrimination; however, she submitted to this record no formal finding or decision from any of these forums favorable to her allegations. She has offered no other persuasive evidence to substantiate her allegations of harassment and discrimination or to establish that the manager or supervisors acted outside the bounds of their managerial discretion.[12] Appellant's perception of wrongdoing or intimidation is not enough. The issue is one of proof. Without persuasive evidence that error, abuse, harassment or

[3] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[4] *Sandra F. Powell*, 45 ECAB 877 (1994).

[5] *Merriett J. Kauffman*, 45 ECAB 696 (1994).

[6] *Lorna R. Strong*, 45 ECAB 470 (1994).

[7] *James W. Griffin*, 45 ECAB 774 (1994).

[8] *Raul Campbell*, 45 ECAB 869 (1994).

[9] *Daryl R. Davis*, 45 ECAB 907 (1994).

[10] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 42 ECAB 566 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

[11] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[12] The record contains an October 23, 1997 letter to appellant from a manager stating: "This is to inform you that your work area configuration at the Mission Peak Station has been modified to conform with your job limitations as noted on previous job offer." Notwithstanding a possible inference, at best, that appellant's work area configuration did not previously conform, appellant's assertions of inconvenience fail to establish how the rearrangement she complained of violated a specific medical limitation.

discrimination did in fact occur, the record fails to establish a compensable incident or factor of employment.[13]

The August 5, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 7, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] When the record fails to establish a compensable factor of employment, it becomes unnecessary to review the medical opinion evidence to determine whether compensable, established factors of employment caused or aggravated the diagnosed medical or emotional condition. *See Norma L. Blank*, 43 ECAB 384 (1992).