

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. LINDSAY and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

*Docket No. 00-1459; Submitted on the Record;
Issued September 6, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On May 3, 1999 appellant, a 50-year-old postal clerk, filed a claim for benefits, alleging that she had sustained an emotional condition caused by an incident at work, which occurred on April 27, 1999. In an April 28, 1999 report of injury statement, she alleged that she had been harassed by her supervisor since she reported a back injury six weeks previously, claiming that her supervisor accused her of lying and engaging in unsafe work practices. Appellant complained of constant crying, extreme anxiety, poor appetite and feeling unlike her normal self.

By letter dated May 12, 1999, the Office of Workers' Compensation Programs advised appellant that the evidence she submitted was not sufficient to determine whether she was eligible for compensation benefits, and that she needed to submit a detailed description of the specific employment-related conditions or incidents she believed contributed to her illness. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at her employing establishment contributed to her condition.

By decision dated June 18, 1999, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty.

By letter dated July 18, 1999, appellant requested a hearing, which was held on December 16, 1999.

By decision dated February 3, 2000, an Office hearing representative affirmed the Office's previous decision.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁴

With regard to her allegations of harassment, it is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. It is well established that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. A claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁵ The Board has underscored that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁶ The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings, alone, are not compensable. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.⁷

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*

⁵ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *Norma L. Blank*, 43 ECAB 384 (1992).

⁷ *Id.*

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that her supervisor engaged in a pattern of harassment. These included appellant's allegations that her supervisor, Constance Arnick, had continually harassed her for six weeks after appellant reported having a back injury, accused her of lying and engaging in unsafe work practices. Appellant has alleged that Ms. Arnick harassed her, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the allegations.⁸ Appellant has not submitted any factual evidence to support her allegations that she was harassed, mistreated, or treated in a discriminatory manner by her supervisor. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.⁹ For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Board further finds that the administrative and personnel actions taken by management in this case do not evidence agency error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹⁰

In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the alleged incidents involving personnel matters on the part of the employing establishment. Her union representative, Vickie Mitchell, testified at the hearing that Ms. Arnick called her over on April 27, 1999 and requested to speak with appellant while she was sitting at her desk. Ms. Mitchell stated that appellant became very excited and upset during this meeting and was taken to the medical unit. Appellant testified that Ms. Arnick approached her on April 27, 1999 and asked her to fill out some papers. She stated that when she informed Ms. Arnick she had already completed all her necessary paperwork, Ms. Arnick became insistent and threatened her with disciplinary action for committing an unsafe work practice. Appellant stated that she became angry and emotionally upset because she felt Ms. Arnick was trying to intimidate her and required medical attention.

Appellant's supervisor, Ms. Arnick, testified at the hearing that she approached appellant on April 27, 1999 to ensure that the accident report of February 25, 1999, which described an incident in which appellant injured her back, was accurate. Ms. Arnick stated that when she asked appellant why she continued to carry a tray of mail over to a container, when she had indicated that she injured her back because the tray was too heavy when she picked it up, appellant disputed the account. After the union representative left, Ms. Arnick returned to her desk. Appellant then approached Ms. Arnick at her desk and began to berate her in an emotional, irrational manner. Ms. Arnick indicated that she did nothing to provoke appellant, and conducted herself in a calm, reasonable manner throughout the incident. Ms. Arnick reiterated these assertions in a statement received by the Office on January 24, 2000.

⁸ See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.)

⁹ See *Curtis Hall*, *supra* note 5.

¹⁰ *Alfred Arts*, 45 ECAB 530 (1994).

The hearing representative properly found in his February 3, 2000 decision that although the evidence of record indicated appellant became upset during an April 27, 1999 meeting with her supervisor and her union representative, the evidence did not establish that the supervisor engaged in any abusive or unreasonable behavior at this meeting. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹¹ Further, disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.¹² The hearing representative found that the supervisor's sole purpose in approaching appellant on April 27, 1999 was to determine whether an injury appellant sustained in February 1999 had been caused by an unsafe work practice and, if so, to undertake to prevent such injurious conduct in the future. Thus, the hearing representative properly concluded that appellant's supervisor was acting in an administrative capacity during this meeting, and that the incident did not constitute a compensable act.

Accordingly, a reaction to such factors did not constitute an injury arising within performance of duty. The Office properly concluded that in the absence of agency error such personnel matters were not compensable factors of employment. Therefore, appellant failed to meet her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated February 3, 2000 and June 18, 1999 are hereby affirmed.

Dated, Washington, DC
September 6, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Alfred Arts*, 45 ECAB 530 (1994).

¹² *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).