

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN E. LUNZ and U.S. POSTAL SERVICE,
POST OFFICE, Anderson, SC

*Docket No. 00-2622; Submitted on the Record;
Issued September 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On July 6, 1999 appellant, a 43-year-old clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from fibromyalgia due to employment-related stress. She first became aware of her condition on February 16, 1999, but did not realize her condition was employment-related until May 24, 1999. In a separate statement dated July 12, 1999, appellant described a series of employment incidents beginning in October 1998, which purportedly caused or contributed to her claimed condition. She alleged instances of harassment, an improper demotion, verbal abuse and other difficulties in performing her job-related duties. Additionally, appellant submitted medical evidence from her treating physician, Dr. M. Glenn Abernathy, who attributed her fibromyalgia to employment-related stress.

After further development of the record, the Office of Workers' Compensation Programs issued a decision on May 17, 2000 denying compensation on the basis that the evidence failed to establish that the claimed emotional condition occurred in the performance of duty. The Office found that appellant failed to substantiate her claims of harassment. Additionally, the Office found that several of the alleged incidents involved administrative or personnel matters, and therefore, were not compensable employment factors. With respect to the alleged verbal abuse, the Office explained that while appellant established that a supervisor had called her a "God damn liar," the particular circumstances did not warrant a finding of compensability.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

In order to establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her

condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.³

If a claimant implicates a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

Appellant has identified three employment factors as the purported cause of her claimed condition.

As previously noted, when disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. The Board has held that an emotional reaction to a situation in which an employee is trying to meet her position requirements is compensable.⁵

In her July 12, 1999 statement, appellant described an October 1998 incident that involved another employee's alleged falsification of time and attendance records. At the time of the incident, appellant was acting in a supervisory capacity. Based on her account, the employee punched out for lunch and immediately punched back in, indicating that he did not intend to take a lunch break.⁶ However, appellant explained that the employee was absent during his lunch

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

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

³ See *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁵ Additionally, employment factors such as an unusually heavy workload and the imposition of unreasonable deadlines are compensable. *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984). Appellant, however, need not prove that she was overworked in order to demonstrate a compensable employment factor.

⁶ The process of punching out and immediately punching back in has been variously described in the record as either a "one click" or a "one tick."

break on October 17, 1998, but nonetheless he left work early that day as if he had in fact worked during lunch. After appellant initiated disciplinary action, another supervisor, Julie Ragsdale, advised her not to pursue the matter.⁷ When appellant did not readily accept Ms. Ragsdale's advice, she accused appellant of having done the same thing in the past and allegedly stated "What if the union found out?"⁸ Appellant denied Ms. Ragsdale's allegation.

Ms. Ragsdale's submitted an August 10, 1999 statement in which she explained that appellant was trying to fire an employee for something appellant had done herself over a month prior to the October 17, 1998 incident. She also submitted time and attendance records for both appellant and the employee accused of falsifying his time card.⁹ Ms. Ragsdale explained that the employee was not dismissed and that the matter had been settled despite appellant's objections.

The Postmaster, Adele M. Striss, also submitted a statement dated August 10, 1999, wherein she addressed the October 1998 timekeeping incident. Ms. Striss explained that appellant brought the matter to her attention and because she was not familiar with using the electronic time clock, she discussed the "one tick" incident with a labor representative, who in turn recommended that an investigation be undertaken. She indicated that upon further investigation it was revealed that appellant had also done a "one tick" and that she allegedly asked or told other employees to do the same. Ms. Striss further indicated that she instructed Ms. Ragsdale to discuss the matter with appellant. Although appellant denied any wrongdoing, Ms. Striss indicated that after reviewing all the available information, she decided not to allow appellant to continue as an acting supervisor, and therefore, she returned appellant to her clerk position. Ms. Striss also provided a copy of appellant's attendance record for August 27, 1998.

Time and attendance issues often fall within the realm of administrative and personnel matters.¹⁰ And as a general rule, an employee's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act because it is not considered to arise out of and in the course of employment.¹¹ Such matters are generally considered to be unrelated to the employee's regular or specially assigned work duties. In the instant case, however, appellant's position as an acting supervisor ostensibly required her to monitor the activities of her assigned subordinates. These duties would naturally include resolving issues of

⁷ Appellant described Ms. Ragsdale as the accused employee's "best friend." Appellant further indicated that while the employing establishment's labor relations manager prepared a letter of dismissal, Ms. Ragsdale told appellant not to give the letter to the employee.

⁸ Appellant explained that Ms. Ragsdale took her back to the office and "threw a computer read out in front of [her]" and stated "You have done it too."

⁹ The information provided indicates that on August 27, 1998 appellant arrived at 8.00 hour and punched out for lunch at 12.75. She returned from lunch at 12.75 and left for the day at 16.00 hour. The accused employee's records indicate that on October 17, 1998 he clocked out for lunch at 11.77 and immediately clocked in at 11.78 hour and later departed approximately 50 minutes prior to his scheduled departure time.

¹⁰ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

¹¹ To the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor. *Kimber A. Stokke*, 48 ECAB 510, 512 (1997); *Dinna M. Ramirez*, *supra* note 10.

time and attendance. Therefore, any emotional reaction appellant experienced as a result of investigating and reporting the unauthorized absence of one of her subordinates would be covered under the Act. Furthermore, appellant's emotional reaction to difficulties she encountered in pursuing a particular form of disciplinary action similarly falls within the scope of the Act, regardless of the fact that her proposed course of action was ultimately rejected.¹² There is no indication from the record that appellant's pursuit of disciplinary action for alleged falsification of time and attendance records by an employee fell outside the scope of her regular or specially assigned work duties. Accordingly, the Board finds that the October 1998 incident represents a compensable employment factor.

The Board further finds that any emotional reaction arising from appellant's reassignment to her prior clerk duties is not covered under the Act. Ms. Striss indicated that she relieved appellant of her acting supervisory duties as a result of the subsequent investigation of the October 1998 incident. The decision to relieve appellant of her supervisory duties is an administrative matter and the record does not clearly establish that the employing establishment erred in discharging its duties in this regard.¹³ Moreover, an employee's frustration from not being permitted to work in a particular environment or hold a particular position is not covered under the Act.¹⁴

Upon returning to her clerk duties, appellant alleged that she experienced stress in attempting to carry out her assigned duties. Specifically, appellant noted that she was required to memorize a scheme that included all the streets for each route. Appellant questioned the reasonableness of this assignment because in her opinion management knew she would never use this information. She considered the assignment a form of harassment. Appellant noted that she studied the scheme on a daily basis for approximately one hour and that it interfered with her ability to complete some of her other assigned duties.¹⁵ Although appellant ultimately memorized the scheme and passed the required test, she explained that the process was stressful and that she was a "wreck" as a result.¹⁶

¹² Whether appellant was guilty of a similar transgression as the one she sought to correct in October 1998 is not relevant to the issue of whether the October 1998 incident represents a compensable employment factor.

¹³ *Dinna M. Ramirez, supra* note 10. It is not entirely clear from the record whether appellant was guilty of falsifying her time and attendance records as alleged. While Ms. Ragsdale accused appellant of also utilizing the "one tick" system and departing early, and Ms. Striss determined that this practice warranted relieving appellant of her acting supervisory duties, there is no indication from the record that appellant did not work during her lunch hour on August 27, 1998. In contrast, the other employee was noticeably absent during his scheduled lunch break on October 17, 1998. Nonetheless, he departed approximately 50 minutes prior to his scheduled departure time. Thus, while appellant and her subordinate may have both utilized the "one tick" method, the difference between the two incidents appears to be that appellant's subordinate did not work during his lunch break on October 17, 1998. Additionally, it appears from the record that even if one worked through their scheduled lunch break, the "one tick" method may not have been an approved practice within the employing establishment.

¹⁴ *Lillian Cutler, supra* note 2.

¹⁵ Appellant indicated that she was counseled on December 11, 1998 regarding her failure to complete all of her assigned duties. Ms. Ragsdale stated that she did in fact speak with appellant about not having completed her assignment on a particular Saturday.

¹⁶ The record indicates that appellant completed the test on January 22, 1999 and attained a score of 95.

The appropriateness of the particular work assignment is an administrative matter and therefore, generally noncompensable.¹⁷ Ms. Striss indicated that all clerks are assigned a scheme when they begin their assignment and that appellant had not previously been assigned one because she was on a higher level. She further indicated that appellant knew at some point she would be required to learn a scheme. Ms. Striss also stated that under the terms of the national agreement with the union, once an employee is given a scheme to learn they must have consistent study time.

Although appellant questioned the appropriateness of the particular scheme assignment, she failed to establish that the employing establishment erred or acted abusively in assigning this particular task. It is clear from the record that completion of this particular assignment was a regular requirement of appellant's duties as a clerk, and constitutes a compensable factor of employment.¹⁸

Appellant also alleged that she was subjected to ongoing verbal abuse and harassment from Ms. Ragsdale. She explained that following the October 1998 incident Ms. Ragsdale would harass her on the workroom floor and call her "a liar" in front of other employees. However, appellant did not provide any specific details regarding the alleged incidents of harassment and verbal abuse on the workroom floor. Appellant also stated that she met with Ms. Ragsdale and the postmaster on December 15, 1998, and during the course of this meeting, Ms. Ragsdale called her a "God damn liar." The following day, Ms. Ragsdale apologized for her remarks.

In her August 10, 1999 statement, Ms. Ragsdale admitted she made the remark attributed to her on December 15, 1998. Additionally, Ms. Striss, the Postmaster, and Mr. Jim R. Ellison, a union representative, who also attended the December 15, 1998 meeting, provided corroborating statements regarding the incident and Ms. Ragsdale's subsequent apology on December 16, 1998.

The Board has recognized that verbal abuse by a supervisor is compensable under certain circumstances.¹⁹

Ms. Ragsdale explained that the December 15, 1998 meeting was called to address concerns that appellant had been "circulating rumors on the workroom floor, stirring up employees and creating a hostile work environment towards management." She submitted a December 14, 1998 statement from Ms. Judy Holiday indicating that appellant had approached her earlier that morning in the bathroom and explained that Ms. Ragsdale had been the impetus behind an earlier personnel action in the finance department.²⁰ Ms. Ragsdale explained that

¹⁷ *Dinna M. Ramirez, supra* note 10.

¹⁸ *Lillian Cutler, supra* note 2.

¹⁹ *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *David W. Shirley*, 42 ECAB 783, 795 (1991).

²⁰ Ms. Ragsdale also submitted statements from two employees who indicated that appellant had solicited their support in filing an equal employment opportunity (EEO) complaint. However, the statement provided by Kathy Jordan was prepared subsequent to the December 15, 1998 meeting.

Ms. Holiday's statement was the catalyst for the December 15, 1998 meeting in which the postmaster planned to advise appellant that "anything [she] learned or [was] privy to as a [supervisor was] confidential and not to be used against the [employing establishment]." According to Ms. Ragsdale, another purpose of the meeting was to advise appellant that she would be removed if she continued to use information gained while in a supervisory capacity to create a hostile work environment.

Ms. Ragsdale further indicated that when apprised of the situation, appellant "continue[d] with her blatant denial even though [management] had written statements...." She explained that she was "disappointed and hurt" by appellant's dishonesty. Ms. Ragsdale also described appellant as "taunting" and stated appellant "shrewdly schemed to upset [her]," which Ms. Ragsdale admittedly "played into...."

In essence, Ms. Ragsdale believed she had sufficient proof that appellant divulged confidential information. And when appellant denied the allegation and began "taunting" her, Ms. Ragsdale became "disappointed and hurt" and as a result, she called appellant a "God damn liar."

Mr. Ellison described the December 15, 1998 encounter as follows: "some taunts were exchanged between [appellant] and Ms. Ragsdale who slapped her hand on a notebook she had lying on the table, stood up continuing the conversation, then sat back down and called [appellant] a 'God damn liar.'"

The Postmaster, Ms. Striss, stated that appellant "continued to provoke [Ms. Ragsdale] with her demeanor and refused to accept responsibility for her actions."

Under the circumstances, the Board finds that Ms. Ragsdale's remark on December 15, 1998 constituted verbal abuse. While acknowledging that she called appellant a "God damn liar," Ms. Ragsdale seeks to justify her unprofessional conduct by noting that appellant provoked her. Appellant's so-called provoking "demeanor" and "taunting" neither excuses nor mitigates Ms. Ragsdale's behavior. When accused of divulging confidential information and confronted with the prospect of dismissal, one might reasonably expect that an employee's demeanor would be less than congenial. Ironically, the accuser resorted to name calling, but not the accused. Furthermore, Ms. Ragsdale made her remark in the postmaster's presence at a time when appellant was also advised that she could possibly lose her job. This particular setting suggests that Ms. Ragsdale's remark would only exacerbate an already tense situation and serve to further embarrass appellant in front of a high ranking agency official. The fact that the meeting occurred behind closed doors and Ms. Ragsdale later apologized does not lessen the effect of her abusive remark. Consequently, any emotional reaction appellant may have experienced as a result of Ms. Ragsdale's December 15, 1998 remark would be covered under the Act.

As appellant has implicated three compensable employment factors, the Office must base its decision on an analysis of the medical evidence. Because the Office found that appellant failed to identify any compensable employment factors, it did not further develop or analyze the medical evidence of record. Therefore, the case will be remanded to the Office for this

purpose.²¹ After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

The May 17, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
September 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

²¹ See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).