

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE E. HUFFMAN and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

*Docket No. 00-2825; Submitted on the Record;
Issued September 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty, causally related to factors of her federal employment.

On December 9, 1998 appellant, then a 50-year-old mail carrier, filed a notice of occupational disease and claim for compensation alleging that she suffered from stress, anxiety and depression as a result of her federal employment. The employing establishment controverted the claim.

In support of her claim, appellant submitted a statement dated November 21, 1998, wherein she alleged that her emotional condition was caused by various problems with her supervisor. She alleged that her supervisor had consistently harassed, discriminated, verbally abused and threatened her and that this created a hostile work environment. Appellant alleged various specific incidents, including problems caused when the volume on her route was increased and her supervisor harassed her when she asked for relay help or overtime to meet her delivery requirements. She further contends that her supervisor harassed her during route deliveries by, *inter alia*, timing her lunch breaks and checking to make sure her vehicle was locked. Appellant alleged that her supervisor scheduled her to work on a date that she should not have had to work under her contract, May 23, 1998 and did not properly inform her that she was expected on that date. She further alleged that he retaliated against her when she had submitted proper sick leave forms by yelling at her upon her return in a negative and harassing matter to "Get back to work." Appellant also noted that she was reprimanded for having coffee at times when other employees were not reprimanded. She alleged that, although she had been approved by the employing establishment to leave at 2:30 p.m. for a four-week period so she could attend the university, her supervisor did not believe her, and opposed her trying to leave on time. Finally, appellant alleged that her supervisor abused policy when he refused to give her colleague a form to give to appellant.

The record reflects that on July 19, 1998 appellant was given notice of suspension for 14 days for unacceptable conduct/violence in the workplace. Specifically, a supervisor for the

employing establishment alleged that on June 29, 1998 appellant yelled at said supervisor, both at the supervisor's desk and on the work floor. The supervisor alleged that appellant asked him why her name was on the "hit list," asserted that she needed street assistance and yelled "I can [no]t take this shit, I [a]m going home sick." He further alleged that appellant continued to use profanity, that she read the statement he was writing on the incident over his shoulder, grabbed it, crumbled it up and threw it back on the desk. The supervisor stated that appellant, in grabbing the statement, made contact with his arm, that the supervisor informed appellant that he was going to contact postal inspectors and that appellant was to leave the facility, that this made appellant more agitated and that appellant started to yell that she was going to sue him. Appellant submitted a grievance she filed with regard to this incident.

Appellant also submitted various statements from her colleagues to support her allegations. In a statement dated August 10, 1998, the shop steward alleged that he was present at the August 3, 1998 official discussion between appellant's supervisor and Nancy Whitten, that the supervisor tried to coerce Ms. Whitten by telling that her that the request for a form was a violation of policy and that she could get herself and Joyce Hoffman in trouble. He noted that he got the forms for appellant by obtaining them elsewhere. In a letter dated September 7, 1998, a union representative noted that on two occasions when Ms. Whitten attempted to obtain forms for appellant, she was deliberately misinformed by the supervisor that these forms were classified and could not be removed from the building in an attempt to intimidate and discourage employees from filing claims.

Appellant submitted her statement, dated May 27, 1998, wherein she noted that she was harassed by her supervisor because she went to get coffee and he told her to get back to work, and that when she asked to see her union representative, her request was denied. In support of her allegation that she was discriminated against in getting coffee, she submitted statements by colleagues regarding the new policy regarding coffee (no one was allowed to obtain coffee other than prior to walking to their case or during break) and contending that certain employee's were given more leeway by their supervisors until the policy was rescinded in late summer of 1998. A colleague also stated that appellant was treated in a disrespectful, harassing tone when he yelled at her on May 27, 1998 to get back to work.

The record also includes postal forms regarding appellant's requests for assistance "relay" for various reasons including poorly written or incomplete labels, excessive heavy parcels and high volume. Appellant submitted statements by colleagues regarding increased work volume and daily confrontations between appellant and her supervisor about the need for relays and overtime, and statements regarding witnessing the dispute about appellant's request to leave at 2:30 p.m. for class.

Appellant also submitted various grievance forms. The first, dated July 9, 1998, alleged that, when she called in sick on June 6, 1998, her supervisor made her respond to 12 questions, rejected her request to see a union representative regarding this and that in doing so violated the terms of the union's agreement. Another grievance, dated September 16, 1998, alleged that appellant became incapacitated from work due to a serious medical condition and provided doctor's certification; however, she was erroneously charged leave without pay for the week of July 31, 1998.

Appellant also submitted attendance and wage records. She further submitted statements from some customers from her route which were complimentary and the postal services responses.

Meanwhile, the employing establishment submitted a response by the supervisor for appellant wherein he stated that appellant's behavior towards him was reactionary and abusive, especially when he was conducting an evaluation of workload in comparison with work hours usage. He stated that he instituted the new coffee policy and that several of appellant's colleagues did receive corrective action for violating this policy. He noted that, although appellant was challenged about the coffee policy on at least two occasions, she did not receive official corrective action. With regard to the dispute as to whether appellant should work on the 1998 Memorial Day holiday, he alleged that the schedule was posted in a timely fashion.

By decision dated November 2, 1999, the Office denied appellant's request for compensation, finding that appellant failed to identify any compensable factors of employment.

By letter dated April 27, 2000, appellant requested reconsideration.¹ In support thereof, she submitted a statement from an additional colleague contending that: (1) appellant was surprised when he told her that she was on the holiday schedule for May 23, 1998; (2) that in early July 1998 a problem arose where mail was improperly labeled on appellant's route; and (3) that many people violated the coffee policy and other employees would get coffee for those who were being closely scrutinized, with appellant being in that group. Another colleague submitted a statement critical of the manner in which the employing establishment changed routes in July 1998. Appellant also submitted further documentation regarding two more grievances, one with regard to an accident to a different employee and a grievance with regard to pay.

By decision dated July 7, 2000 and finalized on July 12, 2000, the Office denied reconsideration, finding that the evidence provided was insufficient to warrant modification of the prior decision.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

¹ An earlier appeal to this Board, ECAB No. 00-769, was dismissed at appellant's request so that she could pursue reconsideration of her claim before the Office.

² *Edward C. Heinz*, 51 ECAB ____ (Docket No. 99-992, issued September 12, 2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

³ *Ray E. Shotwell, Jr.*, 51 ECAB ____ (Docket No. 99-2032, issued September 12, 2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where 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 come under the coverage of the Federal Employees' Compensation Act.⁴

The Board finds that appellant failed to establish that she sustained an emotional condition arising out of her federal employment.

Appellant makes various contentions regarding various administrative and personnel actions. As a general rule, appellant's reaction to administrative or personnel matters falls outside the scope of the Act.⁵ This is because although the handling of disciplinary actions, evaluations, leave requests and the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶ The Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence disclosed error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷ The Board concludes that the employing establishment acted reasonably with regard to the aforementioned personnel or administrative actions. Appellant has provided several statements from coworkers regarding the employing establishment's coffee policy. These statements indicate the dissatisfaction many employees had with this policy. There are also statements to the effect that the policy was enforced in a discriminatory manner. This charge is denied by appellant's supervisor, who noted that certain other employees had been disciplined by him with regard to the violation of the policy, and noted that appellant had never been officially reprimanded with regard to this policy. The Board concludes that the employing establishment did not act in an unreasonable fashion in monitoring the coffee use of its employees. With regard to refusing to give appellant certain necessary forms, the Board notes that appellant has submitted statements by other employees which corroborate that this occurred. However, the Board is unpersuaded that this behavior rose to the level of unreasonableness required to establish a compensable factor, as appellant was able to quickly obtain the forms through another channel. With regard to appellant's allegations that her supervisor timed her lunch breaks and checked to make sure that she locked her vehicle, the Board notes that the monitoring of appellant's work by her supervisor

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Carolyn S. Philpott*, 51 ECAB _____ (Docket No. 98-760, issued November 18, 1999).

⁶ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonator*, 39 ECAB 1260, 1266-67 (1988).

⁷ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

is an administrative function of the employer and is not compensable.⁸ With regard to appellant's allegations that she was improperly being scheduled to work on May 23, 1998, the Board finds that her schedule was properly posted, and that appellant has not shown that the employing establishment acted unreasonably with regard to this. The Board also finds no abuse in the handling of overtime or her supervisor's behavior with regard to what appeared to be a misunderstanding regarding appellant's schedule during the four weeks she left at 2:30 p.m. Finally, the Board finds that appellant failed to submit any evidence, other than her grievances, of any disparity in her pay.

Appellant also attributes her emotional condition to harassment by her supervisor. To the extent that the disputes and incidents alleged as constituting harassment by coworkers and supervisors are established as occurring and arising from appellant's performance of her regular or specially assigned duties, these could constitute employment factors.⁹ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record may constitute factors of employment.¹⁰ In the instant case, there is evidence that appellant's supervisor told her on one occasion to "Get back to work," and that this was perceived as being said in a harassing manner by appellant and some of her colleagues. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹¹ The singular statement to "Get back to work" does not rise to a level of abuse to establish a compensable factor of employment. Neither does the supervisor's activities in questioning appellant's use of relay or overtime, or his attempt to determine the proper amount of time it would take appellant to perform her duties. Finally, there is no evidence that appellant's supervisor acted unreasonably in sending her home on June 29, 1998.

A review of appellant's other allegations and statements reveal that appellant's frustration was not related to the performance of her regular or specially assigned duties, but rather to her interactions with her supervisor regarding the performance of his supervisory functions. An employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act.¹² This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹³ In the instant case, appellant has not submitted evidence of error or abuse sufficient to substantiate that her supervisor acted unreasonably in the performance of his duties.

⁸ *Daryl R. Davis*, 45 ECAB 907, 911 (1994).

⁹ *Christophe Jolicoeur*, 49 ECAB 553 (1998); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ *Id.*; *David W. Shirey*, 42 ECAB 783 (1991).

¹¹ *See Leroy Thomas, III*, 46 ECAB 946 (1995).

¹² *Abe E. Scott*, 45 ECAB 164 (1993).

¹³ *Id.*

As appellant has not submitted the necessary factual evidence to establish that her allegations are compensable under the Act, appellant has not met her burden of proof in this case.¹⁴

The decisions of the Office of Workers' Compensation Programs dated July 7, 2000 and November 2, 1999 are hereby affirmed.

Dated, Washington, DC
September 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).