

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STACEY MITCHELL-HALE and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, AR

*Docket No. 00-2133; Oral Argument Held February 6, 2002;
Issued April 1, 2002*

Appearances: *Stacey Mitchell-Hale, pro se; Thomas Giblin, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish an emotional or physical injury causally related to compensable factors of her federal employment.

On November 16, 1998 appellant, a 34-year-old letter carrier, filed a traumatic injury claim alleging that she sustained a migraine headache on November 6, 1998 after she had requested a duty status report (Form CA-17). By decision dated January 6, 1999, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established a compensable work factor as contributing to her injury. On January 11, 1999 appellant filed an occupational disease or illness claim (Form CA-2), alleging that she sustained an emotional condition as a result of work factors. The claims were administratively combined under the Office File No. 16-0325077.

In a decision dated March 29, 1999, the Office denied modification of the prior decision. By decision dated June 3, 1999, the Office found that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

By decisions dated September 29 and December 2, 1999 and February 8, 2000, the Office reviewed the case on its merits and denied modification.

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to compensable work factors.

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.¹ 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.²

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 the 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 the 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 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 comes within the coverage of the Federal Employees' Compensation Act.³

In her initial claim, appellant alleged an injury as a result of actions by her supervisor on November 6, 1998; appellant indicated that she asked for a Form CA-17 and did not receive the form promptly. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵

The evidence in this case does not establish error or abuse by the employing establishment. In a November 17, 1998 statement, appellant's supervisor indicated that on November 6, 1998 a union steward told him that appellant wanted a Form CA-17 and the supervisor replied that he would get one when he finished counting mail. Before he had finished, he was told that appellant needed to see him on the loading dock, but he was unable to locate appellant. The record does not contain any reliable evidence that is sufficient to establish that the supervisor's actions were erroneous or abusive. Accordingly, the Board finds that appellant has not established a compensable work factor on November 6, 1998.

Appellant has also noted other administrative actions by the employing establishment with respect to her claim. For example, the record contains evidence of disciplinary actions

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

taken against appellant, such as a 7-day suspension in March 1998 and a 14-day suspension in August 1998. Appellant filed a grievance with respect to the 14-day suspension and the evidence indicates that by settlement agreement the suspension was reduced to a letter of warning. There is no admission or acknowledgment of error by the employing establishment and the mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.⁶ The Board finds no evidence establishing error or abuse in a disciplinary action in this case.

The Board has held that matters involving the use of leave and procedures relating thereto are administrative and personnel matters that are not directly related to an employee's regular or specially assigned duties.⁷ Where the evidence demonstrates that the employing establishment has neither erred nor acted abusively in administration of personnel matters, coverage will not be afforded.⁸ Appellant has alleged that she was denied leave, such as advanced sick leave in May 1997 and emergency annual leave in March 1998. She has not submitted any probative evidence establishing error or abuse by the employing establishment in any personnel or administrative action. There are no findings of error, admission of error, or other reliable evidence to support a compensable work factor with respect to administrative actions by the employing establishment.

Appellant has characterized the actions taken by the employing establishment as harassment; she has also alleged verbal harassment by her supervisor and a coworker. A claimant must establish a factual basis for a claim based on harassment by supporting the allegations with probative and reliable evidence.⁹ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.¹⁰ Appellant alleged, for example, that her supervisor used an expletive toward her during a meeting. The statement of a union steward at that meeting, however, indicated that the expletive was addressed to the union steward. The Board has recognized that not every statement uttered in the workplace will give rise to coverage under the Act, that employees will at times dislike the actions of their supervisors but this is not itself sufficient to establish a compensable work factor.¹¹ Appellant submitted a brief witness statement asserted that on several occasions that her supervisor had spoken to appellant in a loud and rude voice, but this type of general observation is not sufficient to support a finding of harassment or verbal abuse. Although there is evidence that appellant had filed Equal Employment Opportunity (EEO) complaints, there are no findings of harassment or discrimination of record.

⁶ See *Michael Thomas Plante*, *supra* note 5; *Richard J. Dube*, *supra* note 4 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

⁷ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Diane C. Bernard*, 45 ECAB 223 (1993).

⁸ See *Sharon R. Bowman*, 45 ECAB 187, 194 (1993).

⁹ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, *supra* note 7.

¹⁰ *Helen P. Allen*, 47 ECAB 141 (1995).

¹¹ *Frank B. Gwozdz*, 50 ECAB 434 (1999).

The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹²

The February 8, 2000, December 2, September 28 and June 3, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 1, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² See *Margaret S. Krzycki*, 43 ECAB 496 (1992).