

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA YATES and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 01-1009; Submitted on the Record;
Issued April 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

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

On June 30, 2000 appellant, then a 43-year-old clerk, filed a claim alleging that she developed "mental concussion aggravation exasperation anguish emotional distress apprehension [and] anxiety," causally related to being wrongfully accused and humiliated in front of her coworkers.

Appellant stopped working and was absent without leave (AWOL) beginning May 6, 1999¹ until November 23, 1999, when the employing establishment issued her a notice of removal for cause.

Appellant submitted several statements detailing her allegations related to the development of her condition and coworker statements about their own experiences. Appellant alleged that from August to October 1991 she asked to be relieved from working on the machines due to wrist pain but that her request was denied. She consequently had to take sick leave October 5 and 6, 1991 due to wrist pain. She was denied leave when requested and that her physician would not allow her to work longer than 30 minutes a day in May and June 1992. Appellant alleged that she was sent home from March until June 1993 because there was no work available within her work restrictions. When she returned to work on June 26, 1993 she was not allowed to work as she did not have the required paperwork from the Injury Compensation Control office and she was not provided an appropriate limited-duty assignment.

Appellant alleged that she was given a temporary assignment in August 1996. She worked five weeks and, thereafter, was sent back to her regular job and paid at the wrong level.

¹ On April 20, 1999 appellant was placed in an off duty status without pay due to threatening gestures. The employing establishment indicated that she might be injurious to herself or to others.

Appellant alleged that, after being taken off work by her treating physician, Dr. Deborah Green, for anxiety, her supervisor would not allow her to return because he had none of the required paperwork. She was sent to the nurse's office for evaluation and was then sent home. In May 1997, while working at her assigned duties, she was asked by two supervisors to leave. Appellant alleged that she returned to work in June 1997 and worked until May 1998 when her physician took her off work.² She applied for a transfer to Anchorage and discovered that her file had been "stuffed" with disciplinary proceedings. She asked a supervisor to remove these actions and the supervisor refused. Appellant subsequently refused assignment to automation to avert further injury. Appellant alleged that, after becoming her supervisor, Andy Weaver gave her a formal disciplinary discussion, that another one was held the next day, that she was harassed by him because she requested work in "modified cases" and that on the third day he referred her to the Employee Assistance Program (EAP) regarding coming to work on time and performing her assigned duties. Appellant alleged that she filed an Equal Employment Opportunity (EEO) complaint claiming that her supervisor was her shadow, that managers took no action on her request for accommodation due to her disability, that her request to be an acting supervisor was not favorably considered and that her scheduled days off were not as she desired. Appellant also filed an EEO complaint for discrimination due to physical disability, which she did not specify.³ A June 17, 1998 removal for continuous AWOL was found to be proper.

Appellant alleged that on July 18, 1998 she had a conflict with a supervisor, Lorraine Rudolph, over a change of schedule, that union complaints were either purged or reduced and that she had a discussion with her supervisor, Ali Rashid, about a backpack on the workroom floor, during which Mr. Rashid threatened her. In April 1999 when she got a bid as a window clerk, she was only allowed to keep it provided that her treating physician stated that she would have no problems performing this job. Appellant alleged that she was sent home on April 20, 1999, that on April 19, 1999 her supervisor made a verbal threat to a coworker, that on April 20, 1999 while at lunch appellant was paged and told to return to her work area, that she had a subsequent (disciplinary) discussion about the scheduling of her lunch break and that her physician again took her off work pending a functional capacity evaluation. Appellant alleged that in November 1999, she received a letter from her supervisor requesting that she return to work after January 7, 2000 or her employment would be terminated. She claimed that she was being forced out of her career while under a physician's care. Appellant also alleged that she was not given the opportunity to supervise and had not been promoted, despite her passing the relevant tests for a supervisory position. Appellant further alleged that she did not timely receive her unemployment compensation, was not paid for her accumulated sick leave and that she was so emotionally traumatized that she was almost petrified to pick up her mail after three o'clock.⁴

² Appellant filed a recurrence of disability claim on May 22, 1998 claiming that she was again totally disabled commencing May 1, 1998 due to right and left wrist, right elbow and neck pain.

³ EEO investigation found that appellant was not "disabled" within the meaning of the statute. It denied all of her discrimination complaints.

⁴ Mr. Rashid denied threatening or lunging at appellant on February 7, 1999 during a discussion about her duplicate time cards, her absence from her workstation and her extended breaks.

In support of her allegations, appellant submitted a November 23, 1999 notice of removal for being AWOL and for failure to follow instructions and an April 20, 1999 supervisor's statement regarding appellant not being at her assigned station. The supervisor told appellant that she could not make up her own schedule and appellant kept getting louder and more agitated in insisting that the supervisor needed the union steward there before she could talk with appellant. The supervisor stated that from appellant's aggressive actions she felt threatened. A December 15, 1999 denial of appellant's grievance was also submitted.

By letter dated August 7, 2000, the Office advised appellant that further information was required to establish her claim, including identification of specific employment factors, with names, witnesses and dates, that caused her alleged condition.

Various investigatory forms were submitted regarding appellant's AWOL incidents accompanied by appellant's denials. Various union grievance dispositions were also submitted.

Witness statements addressing appellant's not working throwing mail and ignoring supervisors were submitted to the record.

Letters of warning were submitted charging failure of appellant to follow instructions.

An October 1998 Final Agency Decision in appellant's EEO complaints rejecting appellant's claims was submitted.

By letter dated September 26, 2000, an employing establishment manager stated that she had no knowledge of appellant being treated any different from any other employee. A supervisor addressed appellant's workers' compensation claims and her attempt to return to work without sufficient medical authorization.

An October 1, 2000 letter about appellant not being assigned to work weekends and denial of her leave requests due to staffing and her lack of seniority was submitted.

In an October 10, 2000 controversion letter, the employing establishment noted that the implicated supervisors denied appellant's allegations, that her leave requests were denied due to staffing requirements, that she failed to follow instructions and was not given a formal discussion within the first four hours of supervision. Appellant's allegations about disciplinary proceedings were not supported by the record and her work restrictions had been accommodated by a limited-duty job assignment. Mr. Rashid denied all allegations. The employing establishment noted that any threat to a coworker did not involve appellant, that being paged during lunch was necessary as she was away from her workstation and that a rehabilitation/reassignment job offer was made to appellant but that she failed to respond with the necessary paperwork. Appellant had numerous problems with most of her supervisors due to poor attendance, work performance related to conduct, failure to follow instructions, bad behavior and bad personal habits. The employing establishment controverted appellant's claim, contending that none of her allegations were within the performance of duty.

By decision dated December 4, 2000, the Office rejected appellant's emotional condition claim finding that she failed to implicate any compensable factors of her employment in the development of such a condition. The Office further found that a few of appellant's allegations could not even be supported as being factual or having occurred as alleged.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁶ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁷

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by her employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ *Id.*

employment and comes within the coverage of the Act.⁸ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁹ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."¹⁰

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 factors of employment 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.¹¹ 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 factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹² When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹³ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.¹⁴

Appellant has alleged that her emotional condition was caused by having to take sick leave and by having days off and leave requests denied. The Board has frequently explained that emotional conditions arising from actions taken by the employing establishment in personnel matters, such as leave usage, are not generally sustained in the performance of duty absent evidence of error or abuse.¹⁵ Appellant's allegations pertaining to her leave requests are not compensable under the Act as there is insufficient evidence to support error by the employing establishment in denying her request.

Appellant also alleged that her emotional condition was caused by not being assigned to work duties or on work schedules as she had requested and felt she should have been assigned.

⁸ See *Donna Faye Cardwell*, *supra* note 6; see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Id.*

¹⁰ See *Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

¹¹ See *Barbara Bush*, 38 ECAB 710 (1987).

¹² *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹³ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁴ See *supra* note 8.

¹⁵ See *Kathi A. Scarnato*, 43 ECAB 335 (1991); *Joel Parker, Sr.*, 43 ECAB 220 (1991).

The Board has also explained that job transfers and changes in duty shifts or assignments, or promotions, are not compensable factors of employment as they do not involve the employee's ability to perform his or her regularly or specially assigned duties. Assignment of work is an administrative or personnel matter of the employing establishment and not a duty of the employee and, absent evidence to support a finding of error or abuse by the employing establishment, is not compensable.¹⁶ Denials by an employing establishment of a request for a different job, promotion or transfer are additionally not compensable factors of employment as they are not a requirement of employment, but rather constitute a desire to work in a different position.¹⁷ In this case, no such administrative error or abuse has been demonstrated. The employing establishment noted that appellant was accommodated with regard to her physical limitation and that she failed to submit adequate medical evidence to support a change of duty assignments. Appellant's desire for a different position does not rise to compensability.

Appellant additionally alleged multiple altercations, confrontations, harassment and threats caused her emotional condition. 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. Mere perceptions of harassment or discrimination are not compensable.¹⁸ An employee's charges that he or she was harassed or discriminated against are not determinative of whether or not harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁹ Words and actions that appellant implicated as being harassment include her perception that Mr. Rashid threatened or lunged at her, that a supervisor verbally threatened her, and that she was subjected to "tag team" supervisory revenge for filing a compensation claim.

These incidents and allegations could possibly rise to the level of compensable harassment if they were established as factual. The Board finds, however, that appellant has failed to submit adequate documentation of the occurrence of these events to the case record and they were all denied by the involved parties. Consequently, they are not compensable under the Act.

Appellant alleged EEO discrimination against her with respect to not receiving accommodation due to her disability, with respect to her not being given "modified cases," by her being given a temporary position and then returned to her regular position and by being referred to EAP for counseling. However, none of appellant's grievances were upheld after investigation. The Board has held that stress or frustration resulting from failure to obtain appropriate redress or corrective action from other administrative agencies with which the complaints are filed against the employing establishment are not compensable under the Act because such actions of the particular administrative agency in reviewing and investigating the charges and rendering a decision thereon do not have any relationship to the employee's regular

¹⁶ See *Janet D. Yates*, 49 ECAB 240 (1997); *Ronald C. Hand*, 49 ECAB 113 (1997).

¹⁷ *Id.*

¹⁸ *Helen Casillas*, 46 ECAB 1044 (1995); *Ruth C. Borden*, 43 ECAB 146 (1991).

¹⁹ See *Anthony A. Zarcone*, 44 ECAB 751 (1993).

or specially assigned duties.²⁰ Therefore, the Board finds that these employment factors appellant alleged are not covered by the Act.²¹

Appellant alleged that she was sent home multiple times because she failed to provide appropriate paperwork or medical documentation that she could work, because the employing establishment had no work available within her capacity and because she was requested to undergo a physical capacity evaluation. These are administrative requirements of the employing establishment and do not arise out of or in the course of her duties, such that they are not now compensable absent evidence of error or abuse.

Appellant also alleged that she had disciplinary discussions, disciplinary proceedings and letters of warning about her being AWOL, making up her own schedule, being away from her duty station and not throwing mail or otherwise not working, which caused her emotional condition. The Board has explained that disciplinary matters concerning reprimands, discussions, letters of warning, suspensions and removals are administrative and personnel matters and are functions of the employing establishment and not duties of the employee.²² Therefore, they are not considered to be compensable factors of employment.

Lastly, appellant alleged that she was not being paid at the appropriate level and was not allowed to be paid for her built up sick leave. This is also an administrative pay matter of the employing establishment. Appellant has not established these allegations as a factor of employment as the evidence does not show error by the employing establishment in these matters.

Appellant has failed to establish any compensable factor of employment such that an emotional condition arising from it would be found to be compensable under the Act. Therefore, the medical evidence need not be considered.

²⁰ *Donna Faye Cardwell*, *supra* note 6.

²¹ See *Berenard Snowden*, 49 ECAB 144 (1997); *Eileen P. Corigliano*, 45 ECAB 581 (1994); *Donna Faye Cardwell*, *supra* note 6.

²² See *Gregory N. Waite*, 46 ECAB 662 (1995); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

Accordingly, the December 4, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 2, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member