

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HELEN F. SMALL and U.S. POSTAL SERVICE,
POST OFFICE, Portland, ME

*Docket No. 01-2232; Submitted on the Record;
Issued April 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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 employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, 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.⁵ If a claimant does implicate 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.⁶

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions at work. By decision dated December 18, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. By decision dated and finalized May 29, 2001, an Office hearing representative affirmed the Office's December 18, 2000 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. She claimed that on March 1, 2000 Bernadine Gibson, a supervisor, harassed her by speaking to her in a rude manner and unfairly charging her with not performing her work duties and taking excessive breaks. Appellant alleged that on March 3, 2000 Louis Zedlitz, a supervisor, unfairly criticized her use of leave and her work methods. She claimed that Mr. Zedlitz spoke to her in a loud and demeaning manner, threatened her with discipline, and wrongly claimed that she was working beyond her physical restrictions. She generally alleged that she was discriminated against due to her limited-duty status.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁸ In the present case, the employing

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.⁹ Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no supporting evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁰ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant alleged that the employing establishment unfairly denied her leave requests for January 14, March 1 and 2, 2000 and that they wrongly disciplined her with respect to her leave usage. She claimed that the employing establishment unreasonably monitored her activities at work and questioned her taking of lunches and work breaks. Appellant further alleged that when she went to the hospital on March 3, 2000, the employing establishment unreasonably failed to provide her with a means of returning home.

The Board finds that these allegations relate to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹¹ Although the monitoring of activities at work and the handling of disciplinary actions, leave requests and medical matters arising at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹² However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses 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.¹³

Appellant did not submit sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. Appellant filed a grievance with respect to some of these matters, but the record does not contain any determination, which shows the existence of employing establishment wrongdoing.¹⁴ With respect to the arrangements for appellant's return from the hospital on March 3, 2000, the exact chain of events on that date

⁹ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992). Appellant submitted a statement in which a coworker claimed that appellant was harassed by supervisors. However, this statement is of limited probative value due to its vague nature.

¹¹ 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. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ Appellant's five-day suspension for leaving work on January 14, 2000 was reduced to an official discussion. However, the employing establishment did not admit to wrongdoing in this matter. The mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse. *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

remains unclear.¹⁵ The record does not contain sufficient evidence to show that the employing establishment committed error or abuse with respect to this incident. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁶

The May 29, 2001 and December 18, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 24, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ Mr. Zedlitz indicated that he arranged for appellant's next of kin to be called and that he did not tell appellant's union representative to leave her alone. Appellant's union representative asserted that Mr. Zedlitz told him to leave the hospital without appellant.

¹⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).