U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE F. HARRELL and U.S. POSTAL SERVICE, MENDEN HALL POST OFFICE, Memphis, TN

Docket No. 01-1249; Submitted on the Record; Issued August 1, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, A. PETER KANJORSKI

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

On December 6, 1999 appellant, then a 49-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained an emotional condition due to various incidents and conditions at work that occurred upon her return from family medical leave on April 1, 1999. She stopped work on November 8, 1999. The employing establishment stated that there was no documentation to support the claim.

In a December 28, 1999 letter, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish her claim and requested that she submit such. Appellant was advised that submitting a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment was crucial. She was allotted 30 days to submit the requested evidence. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

In a January 21, 2000 disability request, Dr. Troy H. Cole, a clinical psychologist, advised that appellant remain on medical leave until Wednesday, January 26, 2000 as he was in the process of completing a psychological evaluation.

In a January 25, 2000 disability certificate, Dr. John W. McCoy, a clinical psychologist, advised that appellant was unable to work as a city letter carrier for the next two weeks.

In an undated letter received by the Office on February 1, 2000, appellant requested additional time to supply her responses as she was undergoing psychological testing and trying to streamline 70 to 80 pages of notes for the Office's analogy.

In a February 7, 2000 disability certificate, Dr. McCoy stated that appellant was unable to work from February 7 to March 7, 2000.

In a May 8, 2000 decision, the Office found that the evidence was not sufficient to establish that appellant sustained an injury at the time, place and in the manner alleged.

By letter dated October 29, 2000, appellant requested reconsideration and enclosed additional information with her request. She stated that the events that occurred between April 1 and November 8, 1999 severely shocked and traumatized her. Appellant stated that she was unable to sequence or write down the events until October 1, 2000, as any attempt prior to that time would cause her to become so ill that she would have to go to sleep. She advised that she was gradually able to reconstruct the events that occurred and sought help from two people to help her write, organize, decipher and type her statements.

In a 34-page statement, appellant described her duties and the incidents that she believed were employment-related conditions that contributed to her illness. She indicated that she was off on family medical leave from December 18, 1998 to March 31, 1999. Appellant's allegations included incidents that involved the employing establishment and supervisors screaming and laughing at her, changes in procedures that caused appellant difficulty in completing assigned tasks in a timely manner, physical threats, including fear of coworkers, discrimination and sexual harassment.

In a June 1, 2000 report, Dr. McCoy indicated that he first saw appellant on November 10, 1999. He noted that she had worked as a mail carrier for 30 years. In December 1998, appellant took leave to care for her mother, who was injured in an automobile accident. She returned in April 1999 and began to experience harassment by her managers. Dr. McCoy stated that appellant found new management, new routines and procedures such that she had the hardest route in terms of volume. He noted that appellant had difficulty obtaining leave for any reason, and when she would return to work, her labels would be changed causing great difficulty in carrying out her job. Dr. McCoy also noted that appellant indicated that her station was racially polarized and management did nothing to stop the tensions, which added to her stress level. He stated that appellant reported she could do nothing right in the minds of her managers and that she was screamed at by her supervisors, who criticized her regardless of what she did. Appellant also stated that she was routinely verbally disciplined, singled out for this type of treatment, while others were not and on one occasion, a manager threatened her by making a fist and hitting his other hand. She also reported an incident of sexual harassment.

By letter dated November 29, 2000, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

The Office did not receive any response from the employing establishment.

In a February 13, 2001 decision, Office denied the claim.

The Board finds that this case is not in posture for decision.

Workers' compensation law does not apply to each and every 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 or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to 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]

Perceptions and feelings alone are not compensable. 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.[3] 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 his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[4] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[5]

In cases involving emotional conditions, the Board has held that, until a claimant has identified incidents or occurrences that are alleged to have arisen out of the employment for compensation purposes, it is unnecessary to address the medical evidence.[6] The Board has also held that when working conditions are alleged as factors in causing a condition or disablity, a determination must be made regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing a condition on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.[7] If a claimant does implicate a factor of employment, the next determination to be made is whether the evidence of record substantiates that factor.[8]

In the instant case, appellant has submitted numerous allegations regarding the working conditions she claimed caused her emotional condition. Among her claims, she noted that, upon her return to work, the management had changed and so had the procedures, causing her difficulty in completing her job in a timely manner. Additionally, appellant stated that it appeared that management was deliberately trying to delay the mail in her building and that the

---

[1] *See Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991); *Lillian Cutler,* 28 ECAB 126 (1976); *see also* 5 U.S.C. §§ 8101-8193.

[2] *Id.*

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

[4] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[5] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[6] *See Richard J. Dube,* 42 ECAB 916 (1991). Regarding a claimant's burden of proof in an emotional condition claim, *see Kathleen D. Walker,* 42 ECAB 603 (1991).

[7] *See Margaret S. Krzycki,* 43 ECAB 496 (1992); *Norma L. Blank,* 43 ECAB 384 (1992).

[8] *Id.*

changes in procedures also caused misdelivery of mail, which caused appellant to be subjected to numerous complaints from dissatisfied customers. She also alleged that the supervisors, Ms. Spencer and Mr. Albright, screamed at her on several occasions, one even touching her inappropriately and that she was not given any assistance despite indicating that she did not want to work overtime. Appellant alleged that her activities at work were unreasonably monitored with regard to the number of visits to the restroom and how she was performing her job duties and that as a result of the change in reporting to work time and procedures, her private vehicle mileage doubled and management refused to pay mileage. She alleged that her coworkers acted inappropriately causing her to be fearful and causing her to take additional time to complete her duties. Appellant stated that one of her coworkers, Mr. Warren, made inappropriate comments regarding her appearance, jewelry and weight and his conduct was not addressed. She related that her supervisors behaved toward her in a hostile and abusive manner, threatened her job, criticized her at work, changed the procedures and labels, failed to train her, failed to provide her with proper lighting, yelled at her for going to the restroom twice in a morning and touched her inappropriately. Appellant stated that she felt she was in a hostile work environment created by management and that there was black social discrimination against her and the tenants of her assigned workstation. She described difficulty in matters regarding sick and annual leave and that she was instructed to provide preferential treatment to a particular customer after delays in mail caused numerous complaints. Appellant stated that she was not always included in letter carrier stand-up talks about job safety, training, updates and employee awareness programs. She alleged that new letter cases were installed for the carriers with fluorescent lamps, however, she still had the old style cases with the old lighting and she felt discriminated against because there was no concern for her eyesight. Additionally, appellant stated it was so hot, that she had to wear shorts in the winter. Finally, she submitted copies of a grievance, which was settled without a determination of fault by the employing establishment.

In this case, the Board finds that appellant has submitted a *prima facie* claim for compensation alleging that numerous factors occurring in the performance of her duties caused her claimed emotional condition. The Office undertook further development of this issue by requesting additional factual information from the employing establishment on December 28, 1999 and again on November 29, 2000. The Office, in its initial letter, requested a response from the employing establishment including: a statement from a knowledgable supervisor on the accuracy of all statements provided by the employee relative to the claim and whether the employing establishment concurred with appellant's allegations; whether there were any stressful aspects of appellant's job; a copy of appellant's position description and the physical requirements; appellant's ability to comply with the demands of her position; and any comments from a supervisor regarding any incidents which may have caused appellant to have an illness. The Office properly informed the employing establishment that without a response, the Office may accept appellant's allegations as factual.[9] The Office did not receive any response from the employing establishment.

The Office's regulations provide that, if the official superior has reason to disagree with any particular aspect of the injury as reported by the employee, the official superior shall submit to the Office a full written explanation specifying the areas of disagreement and the findings upon which the disagreement is based. The regulations also provide for the inclusion of

[9] *See* 20 C.F.R. § 10.117(b). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness,* Chapter 2.806.4 (d)(1) (October 1995).

supporting documentation, such as witness statements, records or any other relevant information.[10] The Office requested such information in this case. The Office did not receive any response from the employing establishment prior to the issuance of its February 13, 2001 decision.

The case will be remanded to the Office to again request the employing establishment to provide a detailed statement from appellant's supervisor addressing each allegation made by appellant. The Office shall provide detailed factual findings regarding whether the claimed incidents occurred as alleged. Following this and such other factual development as the Office deems necessary, the Office should prepare a statement of accepted facts and refer appellant to an appropriate physician for an opinion on any condition or injury sustained as a result of any compensable factors. If the employing establishment does not respond to the Office's request, the Office may accept appellant's allegations as factual in accordance with its regulations and in preparing its statement of accepted facts.

The February 13, 2001 and May 8, 2000 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC
August 1, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] 20 C.F.R. § 10.117(a).