

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE GOLDEN and U.S. POSTAL SERVICE,
LONG BEACH PROCESSING DISTRIBUTION CENTER

*Docket No. 01-1542; Submitted on the Record;
Issued August 5, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her employment.

On April 14, 2000 appellant, then a 38-year-old distribution clerk, filed an occupational disease claim alleging that she sustained an emotional condition due to harassment and discrimination by her supervisor, Arek Tarasiuk, that included yelling, pointing his finger at her and calling her a liar on September 21, 1999; yelling at her, calling her a liar and following her around as she worked on October 2, 1999; pressuring her to attend his Saturday make-up safety talks; accusing her of sleeping on the job; keeping a 3971/absent without leave (AWOL) form until it was too late for appellant to file a grievance; and stalking her. She also alleged that she had an emotional reaction to seeing an anonymous sign posted at work alleging that a certain supervisor had been involved sexually with appellant and other workers.

In a statement dated June 5, 2000, Mr. Tarasiuk stated that appellant refused to attend his safety meetings which was a violation of the employing establishment policy. He stated that he had attempted to discuss appellant's dissatisfaction concerning his supervision of her but she refused any kind of mediation or negotiation of the problems she claimed to be the cause of her work stress. Mr. Tarasiuk stated that appellant began trying to provoke him by not doing her work and disturbing other employees.

In a statement dated December 7, 1999, Paul Walmsley, a coworker, stated that he was standing approximately eight feet from appellant and Mr. Tarasiuk on September 21, 1999 and witnessed Mr. Tarasiuk yell at her and ask her why she was performing a particular task and then called her a liar when appellant responded that another supervisor, Mr. Williams, gave her that assignment. He stated that Mr. Tarasiuk would not talk to Mr. Williams to verify appellant's explanation even though he was only a few feet away and that he continued yelling at appellant.

In a statement dated December 8, 1999, Laura Jackson, a coworker, stated that she and appellant were assigned by Mr. Williams to work a particular machine on September 21, 1999

but Mr. Tarasiuk kept yelling at appellant and accusing her of lying when appellant explained why she was performing that task.

In an undated statement, a union steward stated that on October 3, 1999 appellant was upset and felt that Mr. Tarasiuk was harassing her by sending a female employee into the locker room to look for her. The employee found appellant asleep. Mr. Tarasiuk denied harassing appellant and noted that he had found appellant asleep in her car two weeks earlier but appellant denied this was true. Mr. Tarasiuk told appellant that he would count the extra ten minutes she took on break as unauthorized leave unless she admitted that he caught her sleeping in her car. She refused.

In a statement dated June 12, 2000, Candace Rice, a supervisor, was asked by appellant to attend a meeting with her and Mr. Tarasiuk, who advised appellant that she had missed the Saturday safety talk and appellant told him that she was wearing headphones and did not hear the announcement. Mr. Tarasiuk stated that he had no way of knowing if appellant had attended a safety talk earlier in the week because she refused to sign the safety talk attendance sheet. He asked appellant what “really” seemed to be the problem in their work relationship but appellant did not want to discuss the matter with Mr. Tarasiuk.

In a report dated April 7, 2000, Dr. George M. Hayter, a Board-certified neurologist and psychiatrist, stated that appellant was under his care for work-related stress and was disabled through April 23, 2000.

In a report dated May 15, 2000, Dr. Hayter stated that appellant felt she was unfairly criticized by Mr. Tarasiuk in front of coworkers on September 21, 1999 and that she was harshly rebuked on October 2, 1999 for requesting a light-duty assignment from Mr. Tarasiuk. Appellant alleged that she was continuously harassed by Mr. Tarasiuk and began to develop symptoms of stress. He diagnosed an adjustment disorder with anxiety and depression and stated:

“[Appellant] has provided an explanation which is reasonable and believable. On her initial interview, [appellant] was clearly agitated and emotionally distraught. It now appears, however, that after two weeks off the job on medication that her condition has almost normalized. Given [appellant’s] previous satisfactory performance with the [employing establishment] for the past 11 years, it is likely that some change has occurred within the past 6 months which would account for her sudden need to file a series of grievances. Furthermore, there seem[s] to be no precipitating circumstances in her life outside of work which would account for the degree of agitation which she has been experiencing. Specific incidents relating to [appellant’s] stress are detailed in [s]ection III.¹ In addition, [appellant] alleges that there is an ongoing pattern of stalking and taunting by Mr. Tarasiuk which she believes is intended to provoke her into a verbal outburst which could then be used to discredit her story.

¹ In Section III of his report, Dr. Hayter related appellant’s descriptions of problems at work in February or March 1999 and October 3, November 3 and 28, 1999.

“I find [appellant] to be a candid, thorough and consistent historian with regard to her description of complaints against her supervisor. I find her account of events very plausible and believe that her stress and agitation is due to harassment on the job.”

By decision dated April 19, 2000, the Office denied appellant’s claim on the grounds that the evidence of record failed to establish that she sustained an emotional condition causally related to compensable factors of her employment. The Office found that the evidence supported appellant’s allegation that Mr. Tarasiuk had yelled at her on September 21, 1999 but the medical evidence did not establish that appellant’s emotional condition was due to this compensable factor. The Office found that appellant’s other allegations were either not established as factual or were noncompensable factors of employment.

The Board finds that appellant failed to establish that she sustained an emotional condition causally related to factors of her employment.

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 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.² 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

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, 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.⁶ If a claimant does implicate a factor of

² 5 U.S.C. §§ 8101-8193.

³ *Thomas D. McEuen*, 41 ECAB 387(1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *See Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

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.⁷

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. 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 she had an emotional reaction to seeing an anonymous sign posted at work alleging that a certain supervisor had been involved sexually with appellant and other workers. However, this allegation bears insufficient relationship to appellant's regular or specially assigned duties and cannot be deemed a compensable factor of employment.

Appellant has alleged that harassment and discrimination on the part of her supervisor contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁸ 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.⁹ Appellant alleged harassment and discrimination by her supervisor, Mr. Tarasiuk, that included yelling, pointing his finger at her and calling her a liar on September 21, 1999; yelling at her, calling her a liar and following her around as she worked on October 2, 1999; pressuring her to attend his Saturday make-up safety talks; accusing her of sleeping on the job; keeping a 3971/AWOL form until it was too late for appellant to file a grievance; and stalking her. However, with the exception of the September 21, 1999 incident, which is corroborated by two witness statements, appellant has not submitted sufficient evidence to establish that these work incidents occurred.¹⁰ Therefore, only the September 21, 1999 incident constitutes a compensable factor of employment.

Appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹¹

⁷ *Id.*

⁸ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ See *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ 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).

¹¹ See *William P. George*, 43 ECAB 1159, 1168 (1992).

In his report dated May 15, 2000, Dr. Hayter, appellant's attending Board-certified neurologist and psychiatrist, stated that appellant felt she was unfairly criticized by Mr. Tarasiuk in front of coworkers on September 21, 1999. He also related several other work incidents that appellant felt had contributed to her condition. Dr. Hayter stated that appellant had provided an explanation for her emotional condition which was reasonable and believable and opined that her stress and agitation was due to harassment on the job. Dr. Hayter based his opinion that appellant's stress was employment related on numerous work incidents she described to him and on her general allegation of a pattern of harassment and discrimination. However, only the September 21, 1999 incident was accepted by the Office as factual. Appellant's other allegations were found by the Office to be unsupported by the factual evidence of record or allegations which would not constitute compensable factors of employment even if supported by the evidence. Therefore, Dr. Hayter's opinion on causal relationship is not based on a complete and accurate factual background. Due to this deficiency, Dr. Hayter's report is not sufficient to establish that appellant's emotional condition was caused or aggravated by the incident on September 21, 1999.

The decision of the Office of Workers' Compensation Programs dated April 19, 2000 is affirmed.

Dated, Washington, DC
August 5, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member