

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA J. MENYO and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 02-575; Submitted on the Record;
Issued August 8, 2002*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition causally related to factors of her federal employment.

On May 8, 1999 appellant, then a 44-year-old router-letter carrier, filed a notice of occupational disease and a claim for compensation Form CA-2, alleging that her preexisting bipolar emotional condition was aggravated by ongoing harassment, especially the two weeks prior to May 8, 1999.

In a June 28, 1999 letter, the Office of Workers' Compensation Programs informed appellant that the record was insufficient to establish her claim and she needed to provide specific instances of harassment.

Appellant responded that her supervisor, John King, treated her differently than male employees, "pushing" her harder than he did her male coworkers and that her coworkers were allowed to watch television during breaks, while she was scolded for doing so. Appellant alleged that she was verbally assaulted and ordered out of the postmaster's office when trying to use the telephone on his desk, she was retaliated against "unmercifully" by Postmaster Barry Schupp and supervisors King and Roland Gagnon and she was refused a request to change work shifts to accommodate her medical appointments. Appellant alleged she was listed as absent without leave when she was on medical leave and was forced to use a broken wand in the performance of her duties. She also alleged the harassment started after she submitted medical documentation from her physician.

The employing establishment responded to each of these allegations denying retaliation and abusive behavior and explaining they could not accommodate appellant's leave request and shift changes because they would involve changing other workers' shifts and cost more money.

In a December 13, 1999 decision, the Office denied appellant's claim on the grounds that she had not established the alleged incidents had occurred, as the employing establishment had

denied the claims and she had submitted no corroborating evidence of abuse in administrative issues.

In a May 18, 2000 letter, appellant requested a hearing.

In an August 24, 2000 decision, the hearing representative affirmed the denial of appellant's claim finding that she has not substantiated any compensable factors of employment. The Office hearing representative found appellant's allegations of harassment were related to administrative matters and she had not submitted sufficient evidence of error or abuse. Regarding the use of the broken wand, there was no showing that it affected appellant's work; because other employees were required to use the wand as well and no adverse consequences resulted from its use.

In an August 8, 2001 letter, appellant requested reconsideration. In support of her request appellant submitted a personal statement reviewing her allegations. She also submitted statements from coworkers, union officials and from her psychiatrists.

In an April 9, 2001 statement, Dr. Nancy Cibotti Granof wrote that appellant was a patient and undergoing multiple medical tests for a variety of issues.

The statements from appellant's physician addressed that she was being treated for her bipolar emotional and other medical conditions, including depression and that she felt stress and frustration secondary to work. Of note are a June 20, 2001 report from Dr. Christina M. Demopulos, a psychiatrist, who wrote that appellant informed her that prior to her work leave, she was considered absent without leave at work when she had to leave to attend regularly scheduled appointments.

Dr. Robert O. Knauz wrote that appellant contacted him by telephone on August 25 and September 6, 2000 and on both occasions she was upset, frustrated and tearful and she spoke of her belief that she was being treated unfairly at work.

In an August 24, 2000 letter, Dr. W. Gordon Frankle wrote that appellant was upset secondary to difficulties around the use of the telephone. She felt she would be unable emotionally to continue work after this incident.

In a May 18, 2000 statement, Dianne Smith, a coworker and union steward, said that appellant was treated differently than her coworkers because she was not allowed to change her schedule. In an October 13, 2000 statement, Ms. Smith said that she was aware of three incidents where appellant's supervisors investigated and disciplined appellant. Two of the investigations resulted in no disciplinary actions. The third resulted in a 14-day suspension for appellant, for being absent without leave. No dates for the incidents were provided. Nor could Ms. Smith remember what exactly was said.

In statements dated September 6, 2000, Kevin Doyle, a coworker, Thomas Gallego, a union steward and John McDonald, a union vice president, noted there was no employing establishment policy related to telephone usage.

In a June 21, 2001 statement, John Andre said appellant was “treated unfairly” because her supervisors spoke “unprofessionally” or “inappropriately” toward her.

In a May 25, 2001 statement, Kevin McGrath said that he was aware of a defective wand used by all employees, including appellant, to identify when mail was collected in a box. On one occasion, Postmaster Shupp said that the wand was “only a problem for one person.” According to Mr. McGrath, this was an example of how appellant was being “unfairly singled out.”

In a November 8, 2001 decision, the Office denied appellant’s request for reconsideration. The Office noted that appellant’s allegations dealt with administrative issues and therefore, were not in the performance of her day-to-day duties and the defective wand did not have any adverse affect on appellant. The Office further found the evidence submitted did not establish error or abuse in the administration of appellant’s employment. The Board finds the Office’s November 8, 2001 decision constituted a merit review of the claim.

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 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. 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 frustration from not being permitted to work in a particular environment or to hold a particular position.¹

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.² 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.³

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.⁴ 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

¹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁴ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁵

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated August 24, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions and wrongly denied leave, 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.⁶ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁷ 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.⁸ However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has alleged harassment and discrimination on the part of her supervisors contributed to the aggravation of her bipolar emotional 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 her regular duties, these could constitute employment factors.⁹ 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.¹⁰

⁵ *Id.*

⁶ 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).

⁷ *Id.*

⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination, explaining that appellant was not treated differently than others and that she was denied her requested shift change because her request would cost the employing establishment more money and impact other employee's schedules. In light of this explanation, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.¹¹

Appellant alleged that her supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided insufficient evidence to establish that the statements actually were made or that the actions actually occurred.¹² Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Ms. Smith's statements that appellant was treated differently because she was not able to change her schedule was explained by Postmaster Shupp, that it impacted several other workers' schedules and would increase costs. Ms. Smith's statement that she had three discussions with appellant's supervisors regarding investigations and supervision of her does not establish abuse or error because the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.¹³

Statements by Mr. Doyle, Mr. Gallego and Mr. McDonald that the employing establishment had no policy regarding telephone usage does not establish error or abuse because appellant allegedly was not allowed to use a particular telephone on one day.

John Andre's statement that appellant was spoken to "unprofessionally or inappropriately," lacking any specifics such as to the actual words spoken, when and in what context, is too vague to establish error or abuse.

Mr. McGrath's and other statements that Postmaster Shupp said a defective wand, used by all employees, is "only a problem for one worker" does not establish harassment or error or abuse of appellant. It is not clear from his words or from the context of Mr. McGrath's statement that Postmaster Shupp was referring to appellant or why Mr. McGrath believes it was abusive or how this statement rises to the level of harassment or error or abuse.

The witness statements lack specific detail to establish error or abuse or were refuted or explained by the employing establishment. As a result appellant has not met her burden of proof to establish that factors of her employment aggravated her preexisting bipolar condition.

¹¹ 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).

¹² See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹³ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

The decision of the Office of Workers' Compensation Programs dated November 8, 2001 is hereby affirmed as modified.

Dated, Washington, DC
August 8, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member