

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOCKLYN M. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 02-602; Submitted on the Record;
Issued August 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant established that she sustained an emotional condition in the performance of duty.

On March 6, 2001 appellant, then a 43-year-old postal systems coordinator, filed a notice of occupational disease alleging a stress disorder due to factors of her employment. She submitted a personal statement and extensive hospital and medical records.

In an employee statement dated September 10, 2001, appellant outlined the alleged work factors that she felt caused or contributed to her emotional condition. Her statement is paraphrased below.

Appellant related that she was assigned to the position of postal systems coordinator (PSC) (EAS-15) effective August 2, 1999. On August 7, 1999 she was instructed to report to Truman Post Office to train where she was supposed to receive training from Steve Cox for a four-month period. Appellant alleges that Mr. Cox was not interested in training her but had to report there for a four-month period. When she returned from training, she was supposed to act in her official capacity as a PSC but found herself having to report to Rebecca Lanthen (a senior PSC) and Elizabeth Zirfas (the postmaster). From November 29 to December 2, 1999 and again from January 10 to 25, 2000, appellant stated that she had to work for these women basically performing clerical duties. When she was not performing clerical duties, she was either in the field observing duties to be conducted in her official position or just sitting around at her desk with no duties assigned to her. Appellant relates that on or about February 29, 2000, she was placed off work due to high blood pressure.

On April 3, 2000 appellant was offered a detail assignment as revenue assurance analyst (EAS-18). She had not wanted the transfer since she was still awaiting to take over her official duties as the PSC but was told by the finance manager, Rebecca Wing, that she was better suited for the detail job. Appellant worked in the detail position until May 19, 2000 when she was told that due to "budget" problems she would have to be moved to another detail in the sales

department as a provider analyst. She asked to be put back as a PSC but her request was denied because the finance manager thought it would be a “good opportunity” for her. Appellant states that her position was graded as EAS-15. She worked as a provider analyst from May 22, 2000 through May 18, 2001. Ms. Lantham retired and appellant became upset when she saw Ed Hooker, a caucasian male, being promoted to the vacant position of senior PSC. Leota Brown was then allowed to take over the duties of appellant’s original PSC assignment.

Appellant alleges that despite the “budget” concerns, several employees subsequently worked in the detail position of revenue assurance analyst that she was told she had to vacate. Forty-five days after she left this position, Jim Maines was allowed to work this position. On February 1, 2001 Bill Irving was placed in this position. On March 5, 2001 Ellen Steele told her that the revenue assurance analyst detail was used for training and was designed for a person who is promoted into the position. Appellant contends that when she received that information she became severely depressed and reported to Employee Assistance Programs. From March 6 to 16, 2001, appellant was placed in a partial psychiatric program at research. She returned to work on March 21, 2001. Two days later, on March 23, 2001, appellant was admitted as an inpatient for psychiatric treatment until April 13, 2001. She returned to work on April 16, 2001. Appellant worked there until May 8, 2001. She was apparently told to leave sales and report back to finance. Appellant contends that she was removed from this position due to her mental condition.

On April 23, 2001 appellant states that she approached Kim Smykowski asking if she could remove comments about suicidal ideation from her Family Medical Leave Act (FMLA) papers because she feared that the statement would interfere with her request for a transfer to Houston.¹ Appellant had previously requested that she be allowed to transfer to Houston due to her emotional condition. When she accepted the PSC job she had moved from Houston to Kansas City during July 1999. Appellant was told that there were no positions available at her grade level in the Houston area.

On May 21, 2001 appellant returned to the finance department and started a five-week training program. She states that this interfered with her group therapy meetings on Tuesdays. On June 8, 2001 appellant was told to report for more training in Blue Springs from June 19 to 22, 2001. She contends that the actions of the employing establishment in making her undergo these numerous training sessions was to make her feel incompetent. Appellant also alleges that they treated her differently than other employees who had been allowed to take over their official duties in a reasonable time because she was not either a caucasian male or female.

Appellant further cites a meeting on June 22, 2001 as having contributed to her emotional condition. She alleges that the finance manager, Ms. Wing singled her out for not knowing the technical structure of finance and what was required in the PSC position. Ms. Wing was quoted as saying, “I am very upset, I have never been more upset than I am right now.” Ms. Wing further stated that “PSC’s are to report to Ron Claybough for any technical assistance or me, NO ONE ELSE.” She emphasized the importance of confidentiality and integrity stating that “[a]udits are not to be discussed with friends, acquaintances or [c]o[w]orkers!” When appellant

¹ Appellant had requested leave under the FMLA while she was receiving treatment for her stress disorder.

asked why Ms. Wing was so upset, she stated, “someone from Blue Springs told someone in accounting who told me something pertaining to the audit conducted in Blue Spring[s] and this will not be tolerated.” She advised the group, “[y]ou all need to understand that the sanctity of the PSC position is based on this trust and integrity.” Appellant apparently felt that she was being accused of improperly discussing the audit information as she had recently been to Blue Springs and observed an audit during her training.

Appellant later requested a private meeting with Ms. Wing on the morning of June 25, 2001. Ms. Wing has told appellant to study postal manuals prior to the meeting and to review areas that appellant felt could help her better understand her position. When she saw Ms. Wing at 2:30 p.m., appellant describes being told what was expected of her and being asked to repeat those duties back to Ms. Wing. She alleges that Ms. Wing erroneously accused her of having altercations with other employees in the department and of being overly concerned with the detail assignment of other employees. Ms. Wing stated, “I have never encountered an attitude like yours. You really have a problem, but you need to understand that I am the finance manager. I place whoever I choose to on detail assignments ... if you have a problem with this or you are not happy in finance you need to find another place to go!” Appellant contends that she became immediately anxious, depressed and upset. She experienced a headache and went to the medical unit after the meeting where she discovered her blood pressure was 186/106 and was sent home. Appellant relates that the medical unit contacted Ms. Wing to advise her that appellant would be leaving work. She alleges that when she tried to leave the office, Ms. Wing accosted her in the hall in a medium to loud tone of voice saying “do [not] do it, it [is] not worth it, do [not] do it....!” Appellant states that she did not understand what Ms. Wing was talking about but felt nervous and scared and began to cry. She asked Ms. Wing to leave her alone and got on the elevator. Appellant looked up and saw Ms. Wing shaking her head as the doors to the elevator closed.

In a statement dated August 2, 2001, Ms. Wing, the finance manager, denied the allegations by appellant and offered a detailed explanation of the administrative decisions that she made concerning appellant.

In an August 27, 2001 letter, the Office of Workers’ Compensation Programs advised appellant of the factual and medical evidence required to establish her claim for compensation.

In a decision dated October 31, 2001, the Office denied appellant’s claim for compensation on the grounds that she failed to allege a compensable factor of employment and therefore, failed to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case and finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified

compensable employment factors are causally related to the emotional condition.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the employee.³

Workers' compensation law is not applicable 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 coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.⁶ However, the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁷ In determining whether the employing establishment erred or acted abusively, the Board has to examine whether the employing establishment acted reasonably.⁸

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor in general must be allowed to perform his or her duty and that, in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisor's management style or actions taken by the supervisor will not be

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁶ See *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

⁷ See *Elizabeth Pinero*, 46 ECAB 123 (1994).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.⁹

In this case, appellant generally alleges that she was the victim of racial prejudice and harassment due to assignments she received and did not receive between August 2, 1999 and June 22, 2001. Appellant, however, has cited no incidents or events, which would afford coverage under the Act.

The Board will first address appellant's contention that her emotional condition arose from criticisms she received from Ms. Wing regarding her work knowledge and overall attitude. Contrary to appellant's contentions, a claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor or management in general must be allowed to perform their duties and that in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.¹⁰

The fact that appellant may have become upset with the comments made at the meeting on June 22 and 25, 2001 does not support or establish that Ms. Wing acted unreasonably in her attempt to carry out her administrative duties. The Board does not find Ms. Wing's statements to be objectionable as she felt that appellant was too critical of work assignments granted to other employees. Ms. Wing was also concerned whether or not appellant properly understood the duties of her position. This is a reasonable expectation of management with respect to its employees.

Appellant feels that she was the victim of racial discrimination and prejudice and was harassed by being assigned a long series of training sessions. She contends that because of her race she was unable to assume the duties of her position in a timely fashion and was made to feel incompetent. To support a claim based on harassment or prejudice, there must be evidence that it did in fact occur. Mere perceptions alone of prejudice are not compensable under the Act.¹¹

The statements from Ms. Wing indicate that appellant was given her first detail assignment as an opportunity to broaden her skills and that the assignment was not a form of punishment. Although appellant was encouraged to take detail assignments, she apparently was given the opportunity to also decline the positions. When she was forced to leave her revenue assurance analyst detail it was not due to prejudice as alleged but rather budgetary constraints. There is also no evidence that appellant was removed from her detail in the sales department as a form of harassment by management for having been out on family medical leave for an emotional condition.

⁹ *Constance I. Galbreath*, 49 ECAB 401 (1998).

¹⁰ *Id.*

¹¹ *Janet C. Yates*, 40 ECAB 240 (1997).

Appellant has not established that the employing establishment erred or acted abusively in the administration of her work assignments. Perceptions of disparate treatment or prejudice are not sufficient to establish a compensable factor of employment.¹² Appellant appears to have reacted to attempts by management to control her performance and direct her work. The employing establishment, however, has the authority to monitor, question and direct the work of its employees. Appellant's dissatisfaction with the management style equates with her dissatisfaction with assigned duties and is therefore not compensable.¹³

Although appellant disagreed with the manner in which she was trained for her position, the Board notes that the assignment of work is an administrative or personnel matter of the employing establish 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. The Board finds no such error or abuse in this case.

Appellant lists other employees and their ethnic status who were promoted or given detail assignments which she felt were racially based. The Board finds no factual support for appellant's allegation of racial prejudice in the assignment of her duties. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion.¹⁴

Appellant states that when she was leaving the building on June 25, 2001, Ms. Wing accosted her. There is no evidence to support this allegation. Ms. Wing was concerned with the claimant's ability to drive alone. She wanted appellant to know that it was not worth ruining her health by getting so upset about work. Ms. Wing assured appellant that any problems concerning work could be worked out. There is no documentation to support that Ms. Wing was threatening or violent in her behavior.

Finally, although appellant was not allowed to transfer back to Houston, the denial of her transfer request does not demonstrate harassment as alleged. Denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute a desire to work in a different position.¹⁵

¹² *Id.*

¹³ See *Janet D. Yates*, *supra* note 11.

¹⁴ See *William Karl Hansen*, 49 ECAB 140 (1997); *Ronald C. Hand*, 49 ECAB 113 (1997).

¹⁵ *Ronald C. Hand*, *supra* note 14.

The decision of the Office of Workers' Compensation Programs dated October 31, 2001 is hereby affirmed.

Dated, Washington, DC
August 20, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member