

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BELINDA TUCKER and U.S. POSTAL SERVICE, NORTH TEXAS
PROCESSING & DISTRIBUTION CENTER, Coppell, TX

Docket No. 02-653; Submitted on the Record;
Issued August 6, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

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

On April 2, 2001 appellant, then a 35-year-old modified clerk, filed a claim for an occupational disease for anxiety and a depressive disorder. She stated that her modified job met the criteria of her physical medical limitations, but that management instructed her to work outside her physical restrictions and threatened her with discipline if she refused. Appellant stated that she was also disciplined if she reinjured herself while following their instructions. She also contended that, as a result of following instructions of management, she was refused medical attention when her injury worsened and she received a seven-day suspension. Appellant stated that on February 22, 2001 she was assigned to a position in automation where she would be required to stand during the entire tour, however, this assignment was rescinded and she was given a worse assignment where she was scheduled to work 7 days a week with three 16-hour days.

In a letter dated May 31, 2000, appellant's supervisor stated that she sustained a left foot injury on July 28, 1999, that appellant was told she would not be allowed to work with her open toe orthopedic shoe, as this was against safety regulations, but that appellant "kept returning to work without the steel cover and each time she was told that work was available had she had the proper foot wear." Appellant's supervisor acknowledged that "there was a misunderstanding as to her restrictions," but stated that "she never actually worked outside her restrictions." In a letter dated December 15, 2000, an acting supervisor stated that appellant had "never been made to work outside her job restrictions" and that no changes had been made in the modified-job assignment offered to and accepted by appellant. In an August 21, 2001 letter, another employing establishment manager stated that "no one in management has required [appellant] to work outside of her restrictions. In fact, she has been notified several times that she is not to work outside of her work restrictions." This manager noted that appellant's bid job was abolished due to new equipment which reduced work in her area, that she was assigned a job in automation due to an error in the personnel department, that this error was corrected but that the

prior assignment was not retracted until later and appellant at no time worked 16 hours a day or more than 5 days a week.

The employing establishment submitted the limited-duty offer dated September 29, 1999 and accepted by appellant on October 12, 1999. The physical restrictions included an orthopedic shoe, no prolonged walking or standing and no lifting, pushing or pulling over 10 pounds. Appellant did not return to work in this limited-duty assignment until January 25, 2000.

The employing establishment also submitted the seven-day suspension issued on November 1, 2000 for "failure to comply with safety and health regulations, procedures and practices by failing to wear foot support prescribed by personal physician and working outside physical and medical restrictions." This letter cited a September 29, 2000 incident in which appellant stated that her left foot was swollen and painful, her supervisor took her to the health unit in a wheelchair and appellant told the nurse she was not wearing the foot support prescribed by her doctor because it was uncomfortable.

By decision dated September 18, 2001, the Office of Workers' Compensation Programs found that the suspension was not compensable, as no error or abuse was shown and that appellant had not substantiated that she was required to work outside her restrictions, was refused medical attention, was threatened or was required to work two shifts.

By letter dated September 22, 2001, appellant requested reconsideration, contending that the suspension letter dated November 1, 2000 proved that management instructed her to work outside her restrictions, that she had to pull and push weighted containers beyond her restrictions because no runners were available, that she was required to make two dispatches each day which was outside her restrictions and that when she tried to combine the dispatches she was told she would be written up for intentionally delaying the mail. Regarding refusal of medical care, appellant stated that she was taken to the health unit in a wheelchair, that a supervisor was preparing to take her to the hospital but appellant's supervisor instructed this supervisor not to take her but rather to send her home, which was done by the nurse after she iced appellant's swollen foot. Appellant also stated that she was given a letter of warning because she did not work on a holiday and that on the very next holiday she was sent home after one-half hour because employees with modified duties were not permitted to work on holidays.

Appellant submitted a letter of warning dated September 15, 2000 for unsatisfactory services, failure to follow instructions and absence without leave, for failing to report for duty on September 1 and 3, 2000 for holiday work and off-day overtime as per the holiday schedule and a grievance settlement dated December 19, 2000 by which she was "compensated 7.5 hours of holiday pay not allowed to work on November 23, 2000." A memorandum by appellant's supervisor stated that on November 1, 2000 she instructed appellant to report to her secondary in the annex, that appellant stated that was outside her restrictions, that she told appellant in the union office that this was a predisciplinary hearing for failure to follow instructions and that appellant requested a claim form for a traumatic injury for stress due to harassment. In a predisciplinary interview on November 17, 2000, appellant contended that she was constantly being asked to do things outside her restrictions; an acting supervisor stated that they did not have a runner in primary and that appellant's supervisor refused to take her to the hospital. An arbitrator's decision dated April 10, 2001 sustained appellant's grievance of her seven-day

suspension. The arbitrator found that the testimony of the supervisor concerning statements made by appellant to the nurse was insufficient to establish that appellant was not wearing her orthotics on September 29, 2000 as required by her physician and that management had failed to establish a contractual basis permitting it to discipline an employee for failing to follow her doctor's orders.

By decision dated December 21, 2001, the Office found that the additional evidence did not substantiate that appellant was instructed or required to work outside her medical restrictions and did not sufficiently overcome the deficiencies in her claim.

The Board finds that appellant has not established 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 her regular or specially assigned work 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.¹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.²

Appellant has shown error in two matters,³ with regard to the employing establishment's November 1, 2000 seven-day suspension, an arbitrator found that the employing establishment had not established that appellant performed the act for which she was disciplined and had not shown a basis for disciplining her. This constitutes a factor of employment. Further, appellant also alleged that she was improperly sent home after one-half hour on Thanksgiving day 2000, on the basis that modified clerks were not allowed to work on holidays. This was settled with payment to appellant of an additional 7.5 hours of holiday pay. The evidence establishes error in these matters.

Appellant has also shown that her supervisor did not take her to the hospital, but has not shown that hospitalization was necessary or that in fact she went to the hospital that day. The employing establishment admitted that it made errors in assigning her a position in automation and that it improperly did not retract this assignment when it made a new one.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

³ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

Appellant, however, has not substantiated her primary allegation that she was instructed or required to perform work outside her physical restrictions. Three employing establishment managers denied that this ever occurred. While being required to work beyond one's physical limitations can constitute a compensable employment factor, this allegation must be substantiated by probative and reliable evidence.⁴ Appellant has shown that she was instructed to work the secondary in the annex on one occasion, but this does not show assignment to duties beyond her restrictions, nor does a supervisor's statement that a runner was not available. She submitted no other evidence to substantiate her allegation of work beyond her physical limitations.

As found above, appellant has shown some compensable factors of employment. However, the fact that she has alleged and substantiated compensable factors of employment, does not establish entitlement to compensation. She must also submit rationalized medical opinion evidence establishing that she has an emotional condition that is causally related to the identified compensable employment factors.⁵ As she has not submitted any medical evidence supporting that the compensable factors of employment caused or aggravated her emotional condition, appellant has not established one of the essential elements of her claim.

The December 21 and September 18, 2001 decisions of the Office of Workers' Compensation Programs are modified to reflect appellant's showing of compensable employment factors and are affirmed as modified.

Dated, Washington, DC
August 6, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

⁴ *Diane C. Bernard*, 45 ECAB 223 (1993); *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁵ *James W. Griffin*, 45 ECAB 774 (1994).