U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAYLE A. MAY and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

Docket No. 02-1166; Submitted on the Record;
Issued December 31, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

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

In January 1999, appellant, then a 44-year-old letter carrier, filed an occupational injury claim alleging that she sustained an emotional condition due to various incidents and conditions at work. She claimed that the employing establishment mishandled its attempts to alter her work duties as a means of accommodating the fact that she had Raynaud's syndrome. Appellant alleged that the employing establishment's actions in this regard amounted to harassment and discrimination. The medical evidence of record reveals that she has Raynaud's syndrome, a nonwork-related circulatory condition which makes her especially sensitive to cold weather. By decision dated August 11, 2000, the Office of Workers' Compensation Programs denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. By decision dated March 5, 2002, the Office affirmed its August 11, 2000 decision.

The Board finds that appellant did not meet her burden of proof to establish 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 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

[1] 5 U.S.C. §§ 8101-8193.

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]

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.[3] This burden includes the submission of a detailed description of the employment factors or conditions, which she believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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.[5] 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied her 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.

Appellant claimed that she developed stress because the employing establishment improperly handled its accommodation of the fact that she had Raynaud's syndrome. In particular, she claimed that the employing establishment failed to continue honoring an agreement, made in early November 1998, which allowed her to work inside when the temperature fell below 30 degrees.[7] Appellant claimed that, contrary to the agreement, in late 1999, she was required to take sick leave rather than being allowed to work indoors.

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

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

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[6] *Id.*

[7] When appellant worked outside, she spent her time delivering mail on her route.

coverage of the Act.[8] Although the management of work assignments and the handling of accommodations for physical conditions are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[9] 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.[10]

Appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to the above-noted administrative matters. She suggested that the employing establishment broke its promise to continue the agreement made in early November 1998 for a period of more than one year. However, appellant did not submit adequate evidence to support this assertion. The record contains an undated letter in which appellant's union representative, Dan Derosier, discussed the nature of appellant's work accommodation, but the letter does not clearly show that the employing establishment improperly changed appellant's work accommodation. The record contains various documents, including statements of the employing establishment's postmaster, Ronald Britten, which show that the agreement made in early November 1998 was intended to be temporary and only last for a year. Appellant has not otherwise shown that the employing establishment committed error or abuse when it handled her work accommodation or changed her work assignments. Thus, she has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant suggested that the handling of her work accommodation by the employing establishment, including the discontinuation of the work agreement in late 1999, constituted a form of harassment and discrimination. She claimed that the employing establishment's actions showed that it was attempting to "get rid of" or "get even with" her. Appellant claimed that Mr. Britten harassed her by writing a January 18, 2000 letter, which contained "untruths" and "innuendoes."

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[11] 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.[12] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against

[8] *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).

[9] *Id.*

[10] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

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

[12] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

by her supervisors.[13] Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, she provided no evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[14] With respect to her allegation that Mr. Britten harassed her by writing a January 18, 2000 letter, the Board notes that it has reviewed the letter and finds that its content does not support her assertion.[15] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[16]

The March 5, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 31, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

[13] *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).

[14] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[15] For example, appellant asserted that Mr. Britten mischaracterized the nature of the employment factors alleged in her compensation claim. She did not adequately articulate how this assertion, even if shown to be true, would rise to the level of harassment within the meaning of the Act. The employing establishment sent appellant an "options letter" in June 1998, which suggested that she attempt to transfer to a position which consisted only of indoor work. However, she has not shown that this letter was "threatening" or otherwise improper.

[16] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).