U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN L. ROBERSON and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, AR

Docket No. 02-1790; Submitted on the Record;
Issued December 9, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant developed an emotional condition due to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request to subpoena witnesses.

On December 12, 2000 appellant, a 46-year-old data collection technician, filed a notice of occupational disease alleging that she developed an emotional condition due to factors of her federal employment. She stopped work on November 9, 2000 and has not returned. By decision dated June 18, 2001, the Office denied appellant's claim finding that she failed to establish any compensable factors.

Appellant, through her attorney of record, requested an oral hearing on June 27, 2001. Subpoenas were also requested at the same time. Following a letter outlining the basis for issuance of a subpoena, by letter dated January 3, 2002, the Office hearing representative denied appellant's request as she did not provide an explanation for the documents and individuals named nor did appellant provide any addresses where any subpoenas should be sent. By decision dated April 5, 2001, the hearing representative affirmed the Office's June 18, 2001 decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal 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 illness has some connection with the employment but nevertheless does not come within the concept 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 is compensable. Disability is not compensable, however, when it results from factors such 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 attributed her emotional condition to her belief that the employing establishment had placed her entire family, neighbors and associates on surveillance both on the job and off the clock. She wrote that her husband had suffered a disabling injury at another postal facility and, since that time, has subjected her entire family to an unacceptable amount of scrutiny.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[2]

The employing establishment responded to appellant's allegations. In a January 25, 2001 statement, appellant's supervisor, Al McCammon, stated that appellant was not subjected to an unacceptable amount of scrutiny in her job as a data collection technician. He stated that appellant's allegation that a camera had been placed in the data collection office was untrue. As a data collection technician, appellant works on her own and completed tasks without supervision. Mr. McCammon stated that appellant had never been subjected to any investigation and that no one questioned her ability to work or her integrity. He further noted that she had not made him aware of any difficulties she may have been experiencing with her job. Mr. McCammon stated that "[t]he [employing establishment] believes that [appellant's] claim results solely from an investigation concerning her husband's [office] claim status that involved the Postal Inspection Service." He further stated that it was "the [employing establishment's] position that any problems appellant experienced related to stress or depression could be related to her family situation."

In a declaration of December 18, 2001, the postal inspector, Robert Murphy, stated that in August 2000, he received a referral from the Injury Compensation Office, with regard to the claim of Tom Roberson, appellant's husband. When the contract fraud specialist, who was monitoring appellant's husband, thought that Mr. Roberson had noticed him while he had him under surveillance and that Mr. Roberson had become suspicious of any strange vehicles in his neighborhood, it was suggested that conventional surveillance of Mr. Roberson was impractical in the area where he lived. Mr. Murphy agreed and it was decided that they would use a utility pole camera to monitor Mr. Roberson's coming and going from his residence as part of their investigation of him. The camera, which resembled a cable box, was installed on October 25, 2000. The view of the camera included part of the street in front of the Roberson's house, part of the driveway and part of the front yard. The camera was focused solely on an area

[1] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

[2] *Martha L. Watson*, 46 ECAB 407 (1995).

accessible to the public and did not intrude into any area, which there would be a reasonable expectation of privacy by Mr. Roberson or his family. The camera did not provide a view inside the house through the windows. The windows of Mr. Roberson's house were not videotaped. The objective of the camera was to establish if there was a pattern of Mr. Roberson's coming and going from his residence in his vehicle. The video was preset to tape from 8:00 a.m. to 8:00 p.m. Mr. Murphy stated that to his knowledge no one ever watched the monitor other than himself and Ron Franczyk, a technician with the Forensic and Technical Services Division of the Inspection Service. He further related that when Mr. Roberson became aware there was a camera mounted on the utility pole, the camera was removed from the utility pole. Mr. Murphy described the photographic quality of the pictures from the video camera as poor quality and "fuzzy." He further stated that the photographs clearly show that the video camera did not provide a view of the windows of the house. The camera was focused on part of the front yard, driveway and street. Mr. Murphy further stated that appellant worked at a different facility than her husband and was not placed under surveillance at her work. He further stated that there was no covert surveillance camera at appellant's job site.

Mr. Timothy B. Pugh, a coworker of appellant, was deposed on January 29, 2002. He advised that he worked with appellant and they did the same job. Mr. Pugh related that there was talk of surveillance by Mr. McCammon, his supervisor and that there may be a camera watching appellant. He related that Mr. McCammon discussed this with appellant and himself on the dock. Mr. Pugh further stated that Mr. McCammon attempted to talk to him a few times regarding the surveillance of his work area, but "I told him that I wished not to discuss it, just because I have trouble remembering things. Anyway, I did n[o]t want to be confused." Mr. Pugh related that no other supervisor discussed any surveillance with him. He further related that the only thing he knew about surveillance in the City of North Little Rock was what was in the paper, which was a camera on a utility pole.

In a declaration dated February 4, 2002, Mr. McCammon stated that in early November 2000, appellant began making frequent comments about being under surveillance at work. He stated that on November 8, 2000, he observed appellant working a crossword or some other type of puzzle, rather than performing her job duties. When he mentioned that work needed to be done, appellant commented, "Why? Are we being watched?" Mr. McCammon stated that he did not know. He stated that because he wanted to correct appellant's work performance and focus her attention back on work and away from the crossword puzzle, he asked her to accompany him to the dock. Mr. McCammon related that he did not want to single out appellant so he also asked Mr. Pugh to accompany him as well. He related that while they were on the dock, he stated, in answer to appellant's earlier question, that while at work, all employing establishment employees could be subject to surveillance. Mr. McCammon stated that he did not tell appellant that the Statistical Programs Office was under surveillance or that she and/or any other employee, was under surveillance. He further stated that he has never been made aware of any surveillance of the Statistical Programs Office or of appellant and was not aware of any plan to do so.

Appellant responded to Mr. McCammon's declaration. She stated that he called her and Mr. Pugh outside in order to avoid surveillance. Appellant denied making comments about being under surveillance. She stated that she did not recall that Mr. McCammon said they were

under surveillance, but that he said "they are watching and listening in our office." A February 18, 2002 medical report from appellant's psychiatrist commented that her home was under surveillance and that she was told that she was being watching at work.

Appellant has failed to submit the necessary factual evidence to establish that the employing establishment acted unreasonably in the administration of a personal matter. The evidence reflects that it was not unreasonable that Mr. McCammon cautioned appellant and her coworker that their actions at work might be monitored. He wanted to ensure that his employees performed well and that they exhibit good work habits. Appellant may have feared that she was undergoing the same type of investigation as her husband and this was the source of her anxiety. Mr. McCammon did nothing untoward in alerting his employees that they should pay particular attention to their behavior in the workplace.

As noted above, disability is not covered where it results in such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. Furthermore, appellant's dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.[3] As appellant has not submitted any evidence substantiating her allegation that she was being monitored in her workplace and there is no evidence that Mr. McCammon's cautioning appellant that her actions might be monitored was unreasonable, appellant's reaction is considered self-generating and does not give rise to coverage under the Act. Any stress related to appellant's personal life or to the investigation surrounding her husband are clearly not compensable factors of employment.

The Board further finds that the Office did not abuse its discretion by denying appellant's request for subpoenas. Section 8126 of the Act[4] states: "[T]he Secretary of Labor, on any matter within his jurisdiction under this subchapter, may: (1) issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles." This section of the Act gives the Office discretion to grant or reject requests for subpoenas. The Office's regulation on subpoenas provides that an Office hearing representative may upon his or her own motion or upon request of the claimant, issue subpoenas for the attendance of witnesses, if testimony of the witness is relevant and is the best way to ascertain the facts.[5]

The critical question in the case at the time the subpoenas were denied was the sufficiency of the factual evidence as it related to appellant's claim pertaining to the investigation authority of the employing establishment. The hearing representative was correct in finding that although, appellant's attorney eventually provided an explanation to explain the relevance of subpoenaing the witnesses, the subsequent affidavits from Mr. McCammon and Mr. Murphy fail to provide any support for appellant's claim. The Office hearing representative additionally noted that, other than the developmental evidence in the record, there was no evidence of any communication between the Office and the employing establishment.

[3] *See Alfred Arts*, 45 ECAB 530 (1994).

[4] 5 U.S.C. § 8126.

[5] 20 C.F.R. § 10.619(a).

The decision of the Office of Workers' Compensation Programs dated April 5, 2001 is hereby affirmed.

Dated, Washington, DC
December 9, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member