

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOROTHY BROWN and U.S. POSTAL SERVICE,  
ADMINISTRATION BUILDING, Cleveland, OH

*Docket No. 01-1452; Submitted on the Record;  
Issued February 4, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

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

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

On January 9, 2001 appellant, then a 63-year-old Equal Employment Opportunity (EEO) investigator, filed an occupational disease claim alleging that her stress and tension/trauma were caused by factors of her federal employment.

By decision dated April 24, 2001, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant 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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.<sup>1</sup>

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

Perceptions and feelings alone are not compensable. 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 factors of her federal employment.<sup>2</sup> To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>3</sup>

Appellant has alleged that her emotional condition was caused by the reorganization of her office and her subsequent reassignment to the Pittsburgh district. She also alleged that the employing establishment withdrew an offer of employment for a supervisory position in the Cleveland district, which she had accepted, because she had received medical treatment for emotional stress. Appellant alleged that after she received a telephone call from Ernest James, an employing establishment supervisor, asking her to try to report to work, she returned to work on October 30, 2000. She stated that she was escorted out of the employing establishment's building by two security officers, Donna Butwin, the employing establishment manager for human resources, and Gloria Hawkins, the employing establishment manager of EEO, without warning, explanation or justification.

Appellant also alleged that the denial of her request for leave under the Federal Medical Leave Act (FMLA) caused her emotional condition. She filed an EEO complaint alleging discrimination by the employing establishment in reassigning her to the Pittsburgh district and rescinding its offer of the supervisory position. Appellant stated that a coworker told her that her picture was posted/placed in a book by security although she had never been threatening or violent during her career at the employing establishment.

The reorganization and reassignment of appellant to a different position,<sup>4</sup> being escorted by security from the employing establishment's premises, the rescission of an offer of employment, the denial of leave<sup>5</sup> and the filing of an EEO complaint<sup>6</sup> constitute administrative or personnel matters. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.<sup>7</sup>

Sharon Lave, an employing establishment human resource specialist, submitted a January 4, 2001 letter controverting appellant's claim. She stated that the EEO office at the

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<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>5</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>6</sup> *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

<sup>7</sup> *Id.*

employing establishment had been restructured, which resulted in the relocation of positions. Ms. Lave stated that this was an administrative action that was initiated nationally. She noted that her district was notified in April 2000 that the restructuring would result in one position moving to the Allegheny area office in Pittsburgh, Pennsylvania. On July 26, 2000 appellant was notified that she would be reassigned to the position in the area office and receive payment of relocation expenses. Ms. Lave also noted that appellant was given several options to pursue and that appellant initially rejected the reassignment. Further, she noted that appellant subsequently indicated that she would report to the new position on October 10, 2000.

Ms. Lave stated that prior to appellant's acceptance, she requested consideration for a supervisory position in the Cleveland office, but when it was discovered that she had misrepresented her medical condition, her request was rejected. Additionally, Ms. Lave stated that an October 4, 2000 letter directed appellant to report to her new position at the area office on October 10, 2000 and advised her that she would no longer be considered an employee of the Cleveland district. She noted that appellant did not report to her new assignment and that, three weeks later, appellant reported to work at the Cleveland district. When Ms. Butwin was notified about appellant's return to work, she attempted to contact appellant by telephone, but appellant hung up on her. Afterwards, Ms. Butwin and Ms. Hawkins, an EEO dispute resolution manager, went to the plant to advise appellant that she could not remain in the facility and the police were notified as a precaution. Ms. Lave stated that appellant's picture was not posted all over the facility, rather it had been placed in a book for members of the security force who had been instructed that appellant was no longer a Cleveland district employee.

In a January 26, 2001 letter, Ms. Lave reiterated her description of the employing establishment's reorganization, the approval of appellant's request for a supervisory position in Cleveland and subsequent withdrawal of that approval and appellant's status as a Cleveland employee.

In a January 3, 2001 letter, Ms. Hawkins noted that appellant had been reassigned since she was not selected for one of the two positions available in the Cleveland district and that appellant was notified about this action. Ms. Hawkins explained that appellant was escorted out of the plant because she was no longer a Cleveland district employee. She further explained that to the best of her knowledge, appellant had been informed of this by certified mail. Ms. Hawkins stated that she was in the office when Ms. Butwin tried to talk to appellant by telephone and noted appellant's refusal to do so. She also stated that she accompanied Ms. Butwin to tell appellant that she could not work in the plant because she was no longer a Cleveland district employee. In addition, Ms. Hawkins stated that the employing establishment police were notified, but appellant left without incident and that they did not escort her out of the building. She concluded that she did not have any knowledge of appellant's picture being posted in the plant and that it was not posted in the administrative building.

Ms. Butwin's January 23, 2001 letter noted that when appellant reported to work at the Cleveland distribution center on October 30, 2000, she was no longer an employee of that district and that appellant hung up on her when she attempted to tell her about her status. Further, she noted that she was accompanied by Ms. Hawkins to personally tell appellant that she was no longer a Cleveland employee and that she requested the police in case they were needed. Ms. Butwin asked appellant to leave and provided appellant with the specific written order

directing her to report to her reassignment. She stated that appellant left the building peacefully. Ms. Butwin also stated that she had no knowledge whether appellant's picture was posted throughout the plant. She further stated that the police might have requested a copy of appellant's employee identification photograph to provide to security officers.

Employing establishment documents of record described the reorganization of the employing establishment's EEO office and indicated that proper procedures were followed.

A February 27, 2001 statement of John Ella Allen, an employing establishment plant manager, indicated that she did not call appellant or instruct anyone to call appellant with instructions to report to work on October 30 and 31, 2000. Ms. Lave's March 1, 2001 letter indicated that Ms. Butwin and Ms. Hawkins denied placing a telephone call to appellant and directing anyone else to call appellant.

In a March 12, 2001 statement, Mr. James stated that he agreed generally with appellant's description of events that were outlined in her statement regarding the telephone call she received from him. However, in a March 16, 2001 statement, Ms. Lave indicated that upon receipt of Mr. James' statement, she interviewed him about his statement. Ms. Lave stated that Mr. James indicated that he was appellant's personal friend and that he talked to appellant on several occasions advising her to return to work. Ms. Lave also stated that Mr. James neither specifically instructed appellant to return to work in Cleveland nor did Rochelle D. Israel, manager of personnel services, instruct Mr. James to call appellant to tell her to report to work in Cleveland. Ms. Lave noted that Mr. James was not a supervisor and had no authority to instruct employees where to report to work. Finally, Ms. Lave noted that after appellant became an Allegheny employee, any changes to her work assignment would have to be authorized by her supervisor in the area office. In her March 16, 2001 statement, Ms. Israel stated that she communicated with Tom Schimmel, an employing establishment employee, about ensuring that ongoing communication took place with all impacted employees, such as appellant. She noted that Mr. Schimmel worked with all areas at the employing establishment to find appellant a new position. Ms. Israel further noted that she never instructed Mr. James to tell appellant to report to work in the Cleveland district.

Ms. Butwin's October 4, 2000 letter explained that appellant's request for leave was denied because appellant's medical documentation was highly irregular and did not meet the criteria for FMLA.

Based on the statements of Ms. Lave, Ms. Hawkins, Ms. Butwin, Ms. Allen and Ms. Israel, the Board finds that the employing establishment did not err or act abusively in its reorganization and reassignment of appellant or rescinding its acceptance of appellant's request for a supervisory position, summoning the police to escort appellant from its premises and denying appellant's request for leave under FMLA. Further, appellant has not submitted any evidence, such as an EEO decision finding that she was discriminated against by the employing establishment. Therefore, the Board finds that, since there is no evidence of record establishing that the employing establishment erred or acted abusively in handling the above administrative matters, appellant has failed to establish a compensable employment factor under the Act.

As appellant has not established any compensable factors of her federal employment that she implicates in causing the development of her emotional condition appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.<sup>8</sup>

The April 24, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 4, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be reviewed in this case.