U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN GATSON and U.S. POSTAL SERVICE,
FEDERAL STATION, Rochester, NY

Docket No. 01-1096; Submitted on the Record;
Issued January 8, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On April 16, 1999 appellant, then a 43-year-old letter carrier, filed a claim for stress. She stated that on March 5, 1999 she called her supervisor to inform him that she could not get into work due to a snowstorm. Appellant related that her supervisor began shouting and screaming at her, stated that she would not be paid or given leave time and threatened disciplinary action. In a subsequent statement, she indicated that on March 15, 1999 she was given a letter of warning about her attendance and was told she would be placed as absent without leave for March 5, 1999. Appellant related that on March 20, 1999 her doctor instructed her to take two weeks off from work. She commented that when she returned to work on April 5, 1999, her supervisor began yelling at her about parking in the parking lot at the employing establishment when she had walked to work. Appellant also found that her case had been moved to the middle of the workroom floor. She indicated that within five minutes her supervisor was yelling at her from the middle of the workroom floor. Appellant stated that two days later, she was informed that she would be leaving on her route at 11:30 a.m. She indicated that she needed more time to case her route. Appellant stated that the supervisor walked up to her case and whispered "Don't you people know anything?" She commented that the incident eventually ended in the supervisor's office where the supervisor, in her own opinion, was trying to make up new rules. Appellant claimed that she was accused of saying things she had not actually said. She indicated that she went to the medical office at the employing establishment and was advised to see her physician. Appellant claimed that two supervisors had been harassing her endlessly for no reason.

In response, Frank J. Angelini, the manager of customer service, stated that no supervisor had ever yelled, screamed or treated appellant in a wrong way. Mr. Angelini claimed that appellant had a history of obnoxious behavior, communicating by yelling, shouting and swearing, for which she had been disciplined. He contended that in the incidents described by appellant, she was the person who was yelling and swearing while he was trying to talk to her.

Mr. Angelini noted that seven cases were moved to fit a new case at the end of a row on the workroom floor. He stated that the cases were not moved to harass appellant. Mr. Angelini related that she had received a letter of warning for poor attendance.

Mr. Angelini submitted evidence in support of his statement. In a March 12, 1999 letter, he warned appellant that she was unreliable in attendance. Mr. Angelini noted that on 17 occasions between March 14, 1998 and March 17, 1999 appellant had not reported for duty as scheduled, missing 197.69 hours. In a February 4, 1999 note, he indicated that appellant was warned on February 2 and 4, 1999 not to park in the back parking lot of the employing establishment but in one of the spaces that the employing establishment had paid for near the employing establishment. Mr. Angelini indicated that appellant called the requirement "stupid" and began yelling. In a March 5, 1999 note, he indicated that appellant called to state that she could not come in due to the snowstorm. Mr. Angelini informed her that she would be picked up. Appellant then complained of chest pain from shoveling snow. He stated that she would have to provide medical documentation. Appellant refused to get medical documentation. Mr. Angelini warned appellant that she be given leave without pay.

In an April 29, 1999 note, Stephan Erbland, another supervisor, indicated that on April 7, 1999, he asked appellant the time of her appointment for an equal employment opportunity complaint that day. When appellant responded that she did not know, he inquired further and then told her that her appointment was scheduled for 12:00 noon. He instructed her to deliver her mail until 11:30 a.m. and then depart for the general mail facility, the location of the meeting. He asked appellant where she would be on her route at that time. Appellant responded that she did not know. Mr. Erbland determined where appellant should be on her route. Appellant then complained that she did not have a car and would need to take a bus to the general mail facility. When questioned about bus routes and schedules, appellant refused to respond. Mr. Erbland then brought appellant to his office with a union steward. He attempted to explain that he needed the information from appellant so he could cover her job. Mr. Erbland indicated that appellant kept interrupting him. He then ordered her to be quiet so he could speak and warned that failure to do so would result in corrective action. Mr. Erbland told appellant that she had to respond to his questions and that if she ignored him again, she would be subject to corrective action. After further discussion, he gave appellant bus information and indicated that he could arrange a ride for her to the general mail facility. Mr. Erbland related that appellant found a ride for herself and went to the medical facility at the employing establishment.

In an October 1, 1999 decision, the Office denied appellant's claim on the grounds that she had not sustained an injury in the performance of duty.

In a September 26, 2000 letter, appellant requested reconsideration. She submitted a copy of a grievance she submitted in relation to the April 7, 1999 incident, in which she claimed Mr. Erbland became belligerent and threatened her with disciplinary action if she continued to try to explain why she was upset. Appellant claimed that he stated that it was his decision whether appellant attended a scheduled meeting concerning her equal employment opportunity complaint. She requested that Mr. Erbland be removed as a supervisor. A July 7, 2000 grievance settlement declared the grievance moot because Mr. Erbland had been transferred out of the employing establishment. Appellant also submitted a July 9, 1998 grievance in which she claimed Mr. Erbland singled her out to perform additional work. In a September 29, 1998

settlement, the seven-day suspension appellant received was reduced to paper and removed from appellant's personnel folder.

Appellant also submitted a March 14, 2000 decision by an arbitrator on a grievance who noted that Mr. Angelini had instructed appellant to deliver mail to one address in a certain time frame. She requested protection because the recipients were known as members of the Ku Klux Klan. Mr. Angelini refused. Appellant complained that the route was not safe. She testified that Mr. Angelini began screaming at her, putting his finger within inches of her face and began using profane language. Appellant responded with cursing. Mr. Angelini ordered her out of the employing establishment and gave her a seven-day suspension for disrespectful behavior. The arbitrator found that three witnesses corroborated appellant's version of the incident that Mr. Angelini used loud, intimidating and abusive language. He found Mr. Angelini's actions violated the union contract and ordered him to desist from intimidating and verbally abusing appellant and to give appellant a written apology.

Appellant also submitted statements relating to her claim of harassment. In a June 11, 1999 statement, a postal customer stated that she saw appellant's supervisor harass her. Appellant reported that she saw the supervisor five to six times a day watching appellant on her route. She noted that appellant sometimes came to her house crying due to the harassment. In a June 11, 1999 affidavit, another customer reported that she was concerned about appellant. She called the employing establishment to see when appellant would return to work. A supervisor named Steve responded that he hoped she would never return to work. He then added that he was joking.

Appellant also submitted information relating to two other incidents at work. Two coworkers indicated that on October 30, 1999 she pulled into the parking lot of the employing establishment to drop off food before parking her car. One coworker related that Dan Davis, a supervisor, loudly ordered appellant to stop and told her she could not park in the parking lot. When appellant tried to explain, he told her to do as he said. The coworker commented that Mr. Davis' tone was loud and threatening. The coworker intervened to allow appellant to drop off her food and then drive her car to park it appropriately. After appellant parked her car, the supervisor continued to tell her to do what he told her to do. The coworker stated that Mr. Davis' actions were within the realm of violent behavior.

In a March 27, 2000 letter, another coworker stated that she took a customer complaint about appellant. The customer stated that he wanted his mail delivered at 10:10 a.m. every day and called appellant "a fat, black bitch and lazy and rude." The coworker indicated that she took the message and left in on Mr. Davis' desk as he was out of the employing establishment. Two other coworkers stated that they saw the complaint on Mr. Davis' desk. The coworker stated that the next day, Mr. Davis asked appellant six times to ask the coworker what the complaining customer had said. Appellant therefore asked the coworker what the customer had said. The coworker told her that she should ask Mr. Davis but appellant replied that he told her to ask the coworker. The coworker then told appellant what the customer had said about her. The coworker then complained to Mr. Davis, stating that she did not appreciate being placed in the middle of his feud with appellant and adding that his conduct was unprofessional. She related that Mr. Davis replied, "Well, you know how that goes." The coworker stated that Mr. Davis had been harassing appellant ever since she had returned to work.

In a December 27, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and immaterial and therefore insufficient to warrant review of the prior decision. The Office indicated that the incidents appellant described in the new evidence did not provide new information on the incidents of March and April 1999 that appellant described in her original claim.

The jurisdiction of the Board is limited to appeals from final decisions of the Office issued within one year prior of the filing of an appeal.[1] As appellant's appeal was filed on February 26, 2001, the Board only has jurisdiction over the December 27, 2000 decision.

The Board finds that the Office improperly denied appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[2] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[3] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[4]

The Office found that appellant did not provide new evidence relating to the specific incidents of March and April 1999 which formed the basis for appellant's initial claim for compensation. However, appellant's overall complaint was that she was being harassed by her supervisors at the employing establishment and cited the incidents of March and April 1999 as evidence of the harassment. Appellant had made a general allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[5]

[1] 20 C.F.R. § 501.3(d).

[2] 20 C.F.R. § 10.608(b).

[3] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[4] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[5] *Joan Juanita Greene*, 41 ECAB 760 (1990).

The new evidence submitted by appellant provided new facts in support of her claim that she was subjected to harassment by her supervisors. The decision of the arbitrator found that Mr. Angelini had used loud, abusive and intimidating language toward appellant on one occasion. The arbitrator specifically found Mr. Angelini's testimony to be less credible than the testimony of witnesses to the incident involved in the grievance. The decision is a specific finding of abuse on the part of the employing establishment. It also refutes Mr. Angelini's statements in his description of the incidents of March and April 1999. Two customers testified to harassment of appellant by her supervisors or disdain for appellant by one supervisor. Other witnesses described two other incidents that gave further evidence of harassment of appellant. The evidence submitted by appellant in her request for reconsideration was therefore new, relevant evidence addressing her claim that she was subjected to harassment at the employing establishment. The case must therefore be remanded for appropriate consideration of the new evidence. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated December 27, 2000, is hereby reversed.

Dated, Washington, DC
January 8, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member