

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA A. GUNTER and U.S. POSTAL SERVICE,
POST OFFICE, Atwater, CA

*Docket No. 02-165; Submitted on the Record;
Issued July 3, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition causally related to compensable work factors.

On April 28, 1998 appellant, then a 39-year-old clerk, filed a claim alleging that she sustained an anxiety disorder causally related to her federal employment. In a narrative statement dated March 28, 1998, she alleged that she was subject to harassment, verbal abuse, and a hostile work environment. By decision dated June 9, 1999, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established compensable work factors as contributing to an emotional condition. In a decision dated June 28, 2001, the Office denied modification of her prior decision.

The Board finds that appellant has not established that she sustained an emotional condition causally related to compensable work factors.

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.¹ 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.²

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

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his 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.³

The initial question presented in a claim for an emotional condition is whether appellant has established any compensable work factors. The June 28, 2001 Office decision provides a detailed description of the allegations in this case and the Board will not repeat them here. Appellant has made a general allegation of a pattern of harassment by her supervisors. In order to establish a compensable work factor in this respect, there must be probative and reliable evidence of harassment.⁴ Although appellant indicated in a May 5, 1998 statement that she was filing an Equal Employment Opportunity (EEO) complaint, the record does not contain any findings of harassment by the EEO or other probative evidence with respect to claim based on harassment. A statement dated May 8, 2000 from a coworker, Thomas Hamilton, states that some actions taken by the employing establishment seemed like harassment; he refers briefly to administrative decisions of the employing establishment, without providing probative evidence of harassment.

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁵ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷

With respect to specific administrative actions by the employing establishment, there is no evidence sufficient to establish error or abuse in this case. Appellant has alleged, for example, that she was forced to work outside her work restrictions; the employing establishment denied the allegation and no probative evidence of a specific work restriction violation was submitted. She cites incidents in which her work performance was criticized; however, a claimant's perception that criticism is unjustified or embarrassing is self-generated and does give rise to coverage under the Act absent evidence that the interaction was abusive.⁸ Appellant did

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

⁵ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁶ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *Anna C. Leanza*, 48 ECAB 115 (1996).

⁸ *See Constance I. Galbreath*, 49 ECAB 401, 409 (1998).

not submit evidence sufficient to establish that actions of her supervisors were unreasonable or abusive. With respect to being assigned to a new duty station in the storage and supply room, appellant alleged that it was a form of punishment, but an August 15, 2000 statement from a supervisor denies the allegation and there is no basis for a finding of error.

The record does not contain any findings of error or abuse with respect to an administrative matter, an admission of error, or any probative evidence of error or abuse by the employing establishment. The Board accordingly finds that appellant has not established a compensable work factor in an administrative action of the employing establishment. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

The decision of the Office of Workers' Compensation Programs dated June 28, 2001 is affirmed.

Dated, Washington, DC
July 3, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

⁹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).