

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBBIE TIPLER and U.S. POSTAL SERVICE,  
POST OFFICE, Grandview, MI

*Docket No. 02-545; Submitted on the Record;  
Issued July 29, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an emotional condition in the performance of duty as a result of an incident on April 5, 2000.

On December 15, 2000 appellant, then a 41-year-old distribution clerk, filed a notice of traumatic injury alleging that on April 5, 2000 she was verbally attacked by management and was not allowed to work or leave the employing establishment's building. She stopped work on April 6, 2000 and returned to work on October 18, 2000.

In a report dated October 2, 2000, Dr. Herman H. Lucke, a Board-certified psychologist, indicated that appellant began treatment with him on May 10, 2000. His diagnoses included depressive disorder with anxiety features and adjustment disorder. Dr. Lucke noted that appellant was able to return to work effective October 2, 2000.

In a letter dated January 18, 2001, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish her claim for compensation, based on an emotional condition.

The employing establishment submitted a statement with regard to the alleged April 5, 2000 incident, stating that on April 5, 2000 appellant was removing letters from bags in an APC and placing them in trays in another APC. Mary Greble, Postmaster, was walking toward the back of the building past the area where appellant was working. When she was about three feet away, appellant shoved the APC she was working upon into the postmaster's path. The postmaster stated that when she looked back appellant "had flattened herself against a flat case, raised both hands" and began yelling, "stop harassing me." Appellant next ran to the women's restroom. After 45 minutes Jim Boyd, a supervisor, asked Ms. Greble to assist in getting appellant out of the restroom since attempts by other employees had failed. The postmaster went to the restroom door and asked appellant if she needed help to which she replied, "[l]eave me alone." The postmaster opened the door and told appellant that she needed to go home and that she would call someone to come and help her if necessary. At that point, appellant ran out of the restroom and across the workroom floor. Instead of leaving the building, she ran back to the

restroom and locked the door. All the time she was running through the workstation she kept yelling “stop harassing me” and “leave me alone.” The postmaster told appellant through the closed door that she was going to call 911 to come and escort her home. When the police arrived, appellant opened the restroom door and they escorted her to her car. It was noted that appellant did not work again until she had exhausted all of her annual and sick leave. On October 18, 2000 when her leave ran out, appellant returned to work.

In a statement dated February 15, 2001, appellant wrote that she was wearing gloves while working the mail on April 5, 2000 and that the postmaster walked by and told her she did not need to wear gloves. Appellant alleged that Jim Boyd, her supervisor, had given her permission to wear gloves. She contends that she told Mr. Boyd and the postmaster to stop harassing her and then went into the women’s restroom because she was upset. She wrote that when she left the bathroom and tried to go back to work, Mr. Boyd extended his arms to block her passage so she returned to the restroom. Appellant acknowledged that the police arrived and helped her out of the building.

The postmaster also submitted a statement outlining the events of April 5, 2000. She stated that she had reminded appellant that gloves were not necessary and, therefore, not allowed when working letters in trays. The postmaster stated that gloves were only permitted when moving equipment or sorting parcels as outlined in a letter prepared by the Department of Human Resources. The postmaster denied harassing appellant and denied that either she or Mr. Boyd blocked appellant’s movement.

In a decision dated February 28, 2001, the Office denied compensation on the grounds that appellant failed to allege a compensable factor of employment and was, therefore, unable to establish that she sustained an emotional condition in the performance of duty.

Appellant subsequently requested a review of the written record.

In a decision dated July 10, 2001, an Office hearing representative affirmed the Office’s February 28, 2001 decision.

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>1</sup> Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the employee’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>2</sup>

Workers' compensation law is not applicable 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 workers' compensation. These injuries occur in the course of 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 coverage of the Federal Employees' Compensation.<sup>3</sup>

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.<sup>4</sup> However, the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.<sup>5</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>6</sup>

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act, absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor in general must be allowed to perform his or her duty and that, in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisor's management style or actions taken by the supervisor will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>7</sup>

In this case, appellant became upset on April 5, 2000 when she was told by the postmaster and her supervisor that she was not allowed to wear gloves while sorting letters. Although, appellant contends that she was harassed, the decision as to whether an employee is permitted to wear gloves is an administrative function of the employer and is not within

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<sup>2</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> See *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>5</sup> See *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>6</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>7</sup> *Constance I. Galbreath*, 49 ECAB 401 (1998).

appellant's regularly assigned duties.<sup>8</sup> Her emotional reaction to the instruction is not compensable under the Act in the absence of error or abuse.<sup>9</sup> The evidence of record does not establish error or abuse by the postmaster or appellant's supervisor in restricting the use of gloves, the Office correctly determined that appellant failed to allege a compensable factor of employment.

The Board also finds no factual support for appellant's contention that she was physically blocked by her supervisor from returning to work. She has supplied no corroborating witness statements to establish that she was harassed in this manner. Moreover, appellant's supervisor and the postmaster have submitted statements denying that she was blocked in her passage from the restroom to the workroom floor.

Actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable employment factors to the extent that the implicated disputes and incidents arise in the performance of duty. To meet her burden of proof, appellant was required to establish a factual basis for the claim by supporting the harassment allegations with probative and reliable evidence.<sup>10</sup> The mere perception of harassment is not sufficient to establish a compensable factor of employment.<sup>11</sup>

The decisions of the Office of Workers' Compensation Programs dated July 10 and February 28, 2001 are hereby affirmed.

Dated, Washington, DC  
July 29, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See generally *Ronald C. Hand*, 49 ECAB 113 (1997).

<sup>9</sup> *Id.*

<sup>10</sup> See *Lillie M. Hood*, 48 ECAB 157 (1996).

<sup>11</sup> *Martha L. Street*, 48 ECAB 641 (1997); *Anna C. Leanza*, 48 ECAB 115 (1996)