U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA D. McCOMBS and U.S. POSTAL SERVICE,
JOHN F. KENNEDY INTERNATIONAL AIRPORT, Jamaica, NY

Docket No. 01-757; Submitted on the Record;
Issued June 14, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant developed an emotional condition due to factors of her federal employment; and (2) whether the Branch of Hearings and Review properly denied appellant's request for subpoenas.

Appellant, a 50-year-old manager, filed a notice of occupational disease alleging that she developed an emotional condition due to factors of her federal employment. The Office of Workers' Compensation Programs denied her claim by decision dated May 3, 1999. The Office found that appellant had established a compensable factor of employment in that she was not provided with her appeal rights in a grievance denial, but concluded that the medical evidence submitted was not sufficient to establish that her emotional condition resulted from the accepted factor.

Appellant requested an oral hearing on June 2, 1999. She requested subpoenas in letters dated August 3 and November 19, 1999. By decision dated February 24, 2000 and finalized February 25, 2000, the hearing representative affirmed the Office's May 3, 1999 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]

In this case, appellant attributed her emotional condition to: the failure of the employing establishment to provide information regarding her duties and responsibilities; the change of her rest days; disciplinary actions; the requirement that appellant provide coverage for her absence; the failure of supervisors to respect appellant's authority over employees in her section; the requirement that appellant wear a beeper; and instructions to relocate her meetings. She filed several Equal Employment Opportunity (EEO) complaints regarding these actions.

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. Appellant's supervisor, Adele Boehle, stated that coverage of the weekend had been negotiated among the supervisors prior to appellant's arrival. Appellant did not like the established system and it was changed. Ms. Boehle told appellant that she had to arrange for her work to be covered by a subordinate-replacement prior to scheduled leave. She stated that appellant received disciplinary action due to inappropriate conduct and that she was instructed to move her meetings from a high security area. Ms. Boehle also stated that all managers were required to carry beepers for off-duty emergencies. Supervisor Frank Panico also described the reasoning behind a letter of warning issued to appellant. On November 25, 1998 Vito J. Cetta responded to appellant's allegations and stated that she was aware of the duties and responsibilities of her position prior to her promotion and that he reviewed the same with her when she entered the facility. Mr. Cetta also stated that appellant received salary increases in accordance with management promotion guidelines.

Appellant alleged that Mr. Cetta failed to document her 1996 unacceptable performance evaluation. On April 29, 1999 Mr. Cetta responded and stated that he informed appellant that her merit evaluation was unacceptable, but gave her an opportunity to make changes. Appellant made the necessary changes in her performance and received a "met objectives." Therefore, Mr. Cetta indicated that he was not required to document the unacceptable merit rating as her final rating was "met objectives." The Board finds that appellant has not established error or abuse in this personnel action.

Appellant has failed to submit the necessary factual evidence to establish that the employing establishment erred in the above-mentioned administrative actions.

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

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

Appellant alleged that she was denied the authority to recognize her subordinates through award programs. In support of this allegation, she submitted copies of awards which had been reduced. However, the record indicates that appellant had attempted to exceed the yearly limit for cash awards for an employee. She submitted documentation that managers were allowed to approve spot awards. However, appellant has submitted no evidence that the reduction in the awards that she approved was error or abuse on the part of the employing establishment.

Appellant alleged that she was subjected to sexual harassment and disparate treatment. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[3] Appellant failed to submit the necessary factual evidence such as witnesses statements to substantiate these factors of employment.

Appellant alleged that she was subjected to workload increases. Her supervisor, Ms. Boehle, responded and stated that "workload increases" were the nature of management positions and that appellant had to adapt to fluctuations in workload and work requirements. As appellant's supervisor has substantiated that fluctuations in workload were a function of appellant's position, the Board finds that she has established this factor of employment.

The Office accepted as a compensable employment factor the failure of the employing establishment to provide appellant with appropriate grievance procedures following its "Step A."

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[4] 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 claimant'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 claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

In support of her claim, appellant submitted medical reports from Dr. Marvin Feller, an internist, who noted great stress at work on September 23, 1998. Dr. Feller diagnosed job-

[3] *Alice M. Washington*, 46 ECAB 382 (1994).

[4] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[5] *Id.*

related stress and released appellant from work. He stated that on October 5, 1998 that "racial tension at her place of work in reference to her color was the basis for most of her symptoms." Dr. Feller also stated that prejudice against her color by her coworkers caused most her problems. This report is not sufficient to meet appellant's burden of proof as Dr. Feller failed to implicate an accepted factor of employment as the cause of appellant's emotional condition.

In a report dated December 2, 1999, Dr. Vladimir A. Milstein, a Board-certified, psychiatrist, diagnosed major depressive disorder. He attributed appellant's condition to workplace discrimination. As this report does not address the accepted factors of employment, it is not sufficient to meet appellant's burden of proof in establishing that her current condition is due to her federal employment.

The Board further finds that the hearing representative did not abuse her discretion by denying appellant's request for subpoenas.

Section 8126 of the Act[6] provides, in relevant part, "The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may (1) issue subpoenas for and compel attendance of witnesses within a radius of 100 miles." The Office's regulations provide that a request for subpoenas must be made in writing and sent to the hearing representative as early as possible but no later than 60 days after the date of the original hearing request.[7]

The issue to be determined at the hearing was whether the Office properly denied appellant's claim for an emotional condition. Appellant requested an oral hearing on June 2, 1999. On August 3, 1999 she noted that the 60 days for requesting a subpoena had expired prior to receipt of notice of her rights from the Branch of Hearings and Review and inquired about the procedures for requesting a subpoena in this instance. In a letter dated November 19, 1999, appellant requested Mr. Cetta, Mr. Panico, Ms. Boehle, Harvey Kasuto and Matthew Doxsey be subpoenaed to testify. Appellant also requested documents from the employing establishment including her merit evaluations. At the oral hearing on December 3, 1999, the hearing representative stated that she had not received the request and noted that appellant had sent the document by certified mail, but had not received the return receipt. In the February 24, 2000 decision, the hearing representative stated that she received appellant's subpoena request on December 1, 1999 and that it was therefore not timely.

An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[8] In this case, appellant's initial inquiry regarding the subpoena process was untimely. Appellant then further delayed submitting her request for subpoenas for an additional 90 days. The Board finds that, due to the delay in submitting her request, the hearing representative did not abuse her discretion in finding that appellant's request for subpoenas was untimely.

[6] 5 U.S.C. §§ 8101-8193, § 8126.

[7] 20 C.F.R. § 10.619(a)(1).

[8] *Joseph D. Lee*, 42 ECAB 172 (1990).

The February 25, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 14, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member