U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. MITCHELL and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

Docket No. 01-1656; Submitted on the Record;
Issued June 20, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

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

On April 6, 2000 appellant, then a 50-year-old modified distribution clerk, filed a claim for occupational stress. She described specific incidents and conditions of her employment to which she attributed her condition and medical reports addressing her condition, which indicated that she suffered from anxiety and depression due to feeling persecuted at work. The employing establishment controverted each of appellant's allegations.

By decision dated September 5, 2000, the Office of Workers' Compensation Programs found that appellant had not substantiated any compensable factors of employment. She requested a hearing and submitted additional evidence both before and after the hearing. In an April 19, 2001 letter, the employing establishment filed comments, to which appellant responded on May 1, 2001. By decision dated May 29, 2001, an Office hearing representative affirmed the prior decision.

The Board finds that appellant has not 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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her 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. On the other hand, the disability is not covered where it results from such

factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[1]

Verbal altercations and difficult relationship with supervisors, when sufficiently detailed by the claimant and supported by the record may constitute factors of employment.[2] Verbal altercations may constitute harassment, but for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[3]

An employee's complaints concerning the manner in which a supervisor performs his duties or exercises his supervisory discretion falls, as a rule, outside the scope of coverage provided by the Act.[4] This principle recognizes that supervisors or managers in general must be allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[5] In this case, appellant alleged that she had been singled out at work because of her previous occupational injuries. She indicated that part of her stresses stemmed from pain, from defending her right to limited duty, from being harassed, from discrimination and from retaliation. Appellant stated that managers followed her on breaks and threatened her with removal from service. She also stated that she had to work in the coldest, nosiest and dirtiest area of the work facility, although she also indicated that she had been moved several times. The record indicates that appellant has some work-related conditions, accepted by the Office, for which she has restrictions and performs limited duties. The record further reflects that appellant performed various limited-duty positions.

Many of appellant's allegations concern administrative or personnel matters of the employing establishment, which are not covered under the Act unless error or abuse is shown. Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[6]

Appellant advised that she was injured on May 31, 1995 and in March 1997 and had been working light duty following the first injury. On August 10, 1995 appellant stated that supervisor Steven Roethel advised her that she needed to have her physician fill out a light-duty form. The next day, August 11, 1995, appellant was told that there was no work available for

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

[2] *Christopher Jolicoeur*, 49 ECAB 553, 556 (1998).

[3] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[4] *Supra* note 2 at 557.

[5] *See Alfred Arts*, 45 ECAB 530 (1994).

[6] *Michael Thomas Plante*, 44 ECAB 510 (1993).

her injuries and she alleges that she was threatened by supervisor Roethel, when she was told she had to leave the building right away or the Postal Police would remove her. Appellant advised that she was in shock since she had been working according to her medical restrictions. Appellant further stated that her veteran status did not matter to management.

Appellant's complaint regarding the need to have her physician fill out light-duty forms concerns the employing establishment's decision to continue light-duty work, which is an administrative matter.[7] Her veteran status has no bearing on whether the employing establishment could provide light-duty work within appellant's medical restrictions. She has not shown error in the employing establishment's requirement that light-duty forms need to be filled out by her physician. Appellant also has not shown error in the employing establishment's subsequent decision to have her leave the building, as no work was available. She claims that Mr. Roethel threatened her when she was asked to leave the building. In a March 12, 2001 statement, Carye Farris stated that she was engaged in conversation with appellant on August 11, 1995 when Mr. Roethel approached them and stated rudely that he did not have work available for appellant and that she was to leave the building immediately. He further harshly stated that, if she did not leave the building immediately, he would contact security to remove her by force. Ms. Farris further stated that Mr. Roethel did not trouble to offer any documentation supporting his order, nor did he identify the supervisor or supervisors authorizing his action. Ms. Farris stated that at no time was appellant unruly, petulant or intractable; but that Mr. Roethel's conduct lacked professionalism. In a July 19, 2000 statement, Mr. Roethel stated that he had explained to appellant that as there was no light duty approved within her physician's restrictions, she must end her tour and leave the building as she did not have an approved assignment and could not be on the work floor. He also stated that when appellant started to argue that she wanted to finish her work tour, he stated that it was for her own safety that she could not end her tour and, if she did not end her tour and leave the building, he would call security to escort her out of the building.

Having carefully considered the statements of appellant, Ms. Farris and Mr. Roethel, the Board finds that the weight of the evidence fails to establish error, abuse or unreasonable conduct by Mr. Roethel. Appellant's dislike or disagreement of a supervisory or management action is not actionable, absent evidence or error or abuse.[8] The Board has held that an employee's dissatisfaction with not being permitted to work in a particular environment or to hold a particular position is not compensable under the Act.[9] Although evidence supports that Mr. Roethel did state that he would call security to escort appellant out of the building if she did not end her tour, the record fails to establish error or abuse or unreasonable conduct by the supervisor under the circumstances. Appellant's perception that it was the intent of the supervisor to threaten, intimidate and/or harass her is unsubstantiated.

Appellant stated that when she returned to work in December 1995 with permanent medical restrictions, she faced harassment from supervisors. She alleged that supervisor Jackie

[7] *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

[8] *Supra* note 5.

[9] *Supra* note 6.

Seagrest threatened her with disciplinary action; she was paged while on breaks; supervisor Michael Brescianni screamed and yelled at her in May 1996 about her work restrictions; she was assigned to work in a cold, dirty, noisy area; supervisor Priscilla McConnel began harassing her in March 1999 by following her, making threats and confronting her; her work area was moved; on March 21, 2000, Ms. McConnell told her to move her cart, but no one else had to move their cart; on that date, managers Julie Jacobsen and Jerry Morning laughed at the light-duty employees. Appellant also stated that the employing establishment had attempted to block her claim. She also contended that the employing establishment could not legally release any of the Equal Employment Opportunity (EEO) documents and asserted that her privacy rights had been violated as portions of her EEO findings had been submitted. She stated that, although she was not made to work outside her medical restrictions, she was constantly monitored and harassed because she had the restrictions. In her hearing testimony, appellant stated that the incident with being asked to move the cart did not occur. She stated that the supervisors spoke in a demeaning manner. Appellant further added that the employing establishment had improperly gone through her medical records.

As noted above, disability is not covered where it results in such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. Furthermore, appellant's dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.[10] Also, many of her allegations concern administrative or personnel matters of the employing establishment which, as previously noted, are not covered under the Act absent error or abuse. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.[11]

Appellant's allegations appear to stem from the inference that management was not sufficiently sympathetic to her medical restrictions and that various supervisors acted inappropriately in carrying out their management duties. She has made several vague allegations, but failed to provide probative factual evidence to substantiate that she was harassed in any manner. In a July 25, 2000 statement, Ms. Segrest specifically denied appellant's allegation that she threatened appellant with disciplinary action because she was working outside of her medical restrictions.

In a fax dated July 26, 2000, Ms. McConnell denied appellant's allegation that she had followed appellant on her lunch breaks, restroom breaks or paid any particular attention toward her. She further denied being physically or verbally confrontational with appellant and denied having any conversation with her pertaining to any of the equipment in the operation.

The evidence which appellant submitted regarding Ms. McConnell and other supervisors does not discharge her burden of proof. On May 24, 1999 "Charlene" wrote that she overheard "Priscella" say on May 24, 1999 that someone did not need a break. Charlene stated that she thought Priscella was talking about "you." In an April 20, 1999 statement, Carol Warriner stated that Ms. McConnell harassed employees. In other statements, she indicated that Ms. McConnell

[10] *Supra* note 5.

[11] *Ruthie M. Evans*, 41 ECAB 416 (1990).

was rude to her and appellant. Charmyn Calderone wrote on February 19, 2001 and May 9, 2000 that she had experienced problems with Ms. McConnell and Kendra Herbert. She stated that they were ignorant and hostile. Shirely Walker wrote that on March 1, 1995, a supervisor abruptly told appellant to work, then later she heard the supervisor order appellant to go upstairs. In an undated statement, a C.J. Spauley wrote that, on April 21, 2000, which was later corrected to reflect a date of incident of March 17, 2000, that he saw several supervisors including Julie Jacobs, at the top of the stairs, laughing and pointing at clerks in the modified-duty section. He advised that this was from his point of view. In a May 26, 1993 statement, Ms. Farris wrote that, on May 24, 1993, Louanna Honicka told appellant to leave the workroom floor due to inappropriate behavior. Ms. Farris stated that appellant was not misbehaving. Appellant also submitted documentation showing that she had filed grievances in some of these matters; however, either no final decision had been rendered or the settlements which appellant entered into were vague and did not show specific error and abuse on the employing establishment's part.

The Office hearing representative found and the evidence so reflects, that the various supervisors did not act within their proper roles. The witness statements merely reflected that other individuals were unhappy with their managers and perceived certain actions to be rude. Accordingly, as there is no evidence of error or abuse, appellant's dislike of a supervisory or management action is not actionable and, therefore, cannot constitute a compensable factor.

The Board notes that the employing establishment's action of changing the limited-duty assignments is an administrative action and, as such, constitutes a compensable factor only if appellant shows that the employing establishment abused its discretion. Although appellant has presented complaints pertaining to the location of her work site and its conditions, she has not presented any substantial evidence that the employing establishment had abused its discretion. Thus, any dissatisfaction with her work location results from her frustration from not being permitted to work in a particular environment, which as previously stated, is not compensable. Although appellant maintained that the employing establishment processed her claim late improperly regarded her work-related medical records or her work-related EEO claims, there is no evidence of error or abuse in carrying out of its administrative function.

The Board has held that determinations by the employing establishment concerning the work environment are administrative in nature and are not a duty of the employee.[12] Therefore, absent specific corroboration or evidence of instances of error or abuse, a work environment perceived by appellant as hostile is also not a compensable factor of employment.

As appellant has not presented any corroborated evidence of harassment, intimidation or administrative error or abuse, she has failed to implicate any compensable factor of her federal employment in the development of her emotional condition and thus, has failed to meet her burden of proof.

Accordingly, the May 29, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

[12] *See Merriett J. Kauffman*, 45 ECAB 696 (1994).

Dated, Washington, DC
June 20, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member