

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TANYA M. STANFORD and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-1799; Submitted on the Record;
Issued June 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On May 15, 2000 appellant, then a 36-year-old part-time mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a stress-related condition when she was harassed by her supervisor concerning her leave. She did not stop work. Appellant's supervisor noted on the Form CA-1 that she was following the general procedure established when an employee is absent from work.

Appellant submitted a statement which raised the following allegations: (1) she was harassed and questioned by her supervisor regarding an incorrect clock ring for a lunch period on April 25, 2000; (2) she was harassed and questioned by her supervisor regarding her use of the Family Medical Leave Act (FMLA), specifically the supervisor questioned why the leave form indicated the date of April 10, 1999, which was inconsistent with the March 23, 2000 date stamped at the medical unit; (3) appellant's supervisor was harassing and discriminating against her because of her medical condition and restrictions and failed to provide her with light duty.

The supervisor submitted a statement dated May 16, 2000 indicating that she approached appellant regarding her clocked in lunch period on April 25, 2000. The supervisor further inquired as to the discrepancies on appellant's leave slip and noted that she requested clarification of the leave slip submitted on March 23, 2000. Appellant requested union representation at this time. The supervisor noted that the FMLA leave forms should be submitted to her initially for approval before they are submitted to the medical unit. She noted that as an absence control supervisor it was proper procedure for her to question appellant regarding unscheduled absences and to request evidence if necessary. She further noted that it was her responsibility to inquire of an employee when there are improper clock rings and noted that she treated appellant professionally.

In a letter dated May 30, 2000, the Office of Workers' Compensation Programs advised appellant that the evidence submitted in support of her claim was insufficient to establish her claim. The Office advised appellant of the type of evidence needed to establish her claim and requested she submit such evidence.

Thereafter, appellant submitted employing establishment treatment notes from May 15 to 16, 2000. The treatment notes reflect that appellant presented with chest pains and shortness of breath. Appellant attributed her condition to the harassment she was experiencing from her supervisor. In response to the Office's May 30, 2000 letter, appellant indicated that she wanted her claim to be developed as an occupational disease claim as she experienced many incidents of harassment. She noted that her supervisor was harassing her and discriminating against her due to her medical condition and restrictions. Appellant noted that she faithfully updated her FMLA forms and provided supporting documentation. She noted that she filed an Equal Employment Opportunity Commission (EEOC) complaint. Appellant indicated that she was diagnosed with hypertension in June 1998; anxiety disorder in March 1999 and a seizure disorder in April 1999.

In a decision dated July 6, 2000, the Office denied appellant's claim for compensation on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

By letter dated July 27, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on February 28, 2001. Appellant testified that she requested light-duty work, however, her supervisors ignored her requests. She also submitted medical records from Dr. Ernesto Rodriguez, a family practitioner, dated May 16, 2000 to February 4, 2001; medical records from Dr. George Fisher, a family practitioner, dated January 4 to December 4, 2000; several limited-duty job offers for other employees dated July 3, 1996 to March 16, 1999; witness statements; and excerpts from an EEOC investigative report. The medical records from Dr. Rodriguez dated April 27, 1999 to February 4, 2001 noted that appellant was being treated for depression, anxiety and hypertension and could not return to work. Dr. Rodriguez's note of April 27, 1999 recommended light duty. In his April 18, 2000 report, he noted appellant's seizure disorder was unpredictable and restricted appellant from heavy pulling, lifting of greater than 10 pounds and no operation of heavy equipment or motorized machinery. Dr. Rodriguez's September 18, 2000 report diagnosed appellant with adjustment disorder with mixed emotional problems, anxiety, depression and seizure disorder. He noted appellant's difficulties with her supervisor and recommended that appellant not return to the employing establishment for fear she would exacerbate her symptoms. The medical records from Dr. Fisher indicated that appellant was treated for anxiety, depression, increased blood pressure due to job-related stress. He noted that appellant could return to work full time, however, advised appellant not to return to the employing establishment for fear of exacerbation of her condition. The light-duty job offers were for four other employees who worked with appellant. The witness statement dated May 12, 2000 noted that the witness overheard a conversation between appellant and her supervisor and indicated that the supervisor did not show concern or respect for appellant. The July 22, 2000 witness statement noted that on April 8, 2000 appellant informed this witness that she was being harassed by her supervisor. The statement prepared by the union steward noted that appellant approached her on April 17, 2000 indicating that her supervisor requested her to do a task which was not in compliance with her medical restrictions. The steward approached the supervisor's regarding the proposed

employment duties and thereafter contacted the medical unit in an effort to clarify the medical restrictions. The nurse indicated that appellant's medical restrictions were not specific, only noting no heavy lifting or pushing machinery, and appellant's position was not in violation of these restrictions and therefore appellant could perform the proposed duties. The steward noted that the supervisor was "berating employee" and asking personal medical questions. She witnessed the supervisor question appellant regarding clock rings and engage in a loud argument with appellant. The steward further noted that the supervisor taunted appellant and harassed her regarding her FMLA paperwork. The statement prepared by Barrie Par noted that appellant complained about being harassed by her supervisor regarding clock rings and medical documentation. She noted that she approached the supervisor regarding appellant's complaints and the supervisor became loud and berated them. Ms. Par indicated that the supervisor requested that appellant update her FMLA form and threatened to disapprove it if appellant did not comply. The excerpts from an EEO investigative report noted appellant's allegations of discrimination due to her physical disabilities and that her requests for a light-duty assignment were ignored. Appellant noted the harassment began April 17, 2000 when her supervisor requested that she sweep mail. She advised the supervisor that these duties were not in compliance with her doctor's restrictions and it was at this time management began to question her medical restrictions and documentation. The affidavit from her supervisor noted that she was not aware of appellant's mental and physical disabilities or limitations until she received the EEOC investigative affidavit. She noted that appellant never requested accommodation for her disabilities and did not complain of discomfort. The supervisor noted that appellant was able to perform the functions of her job culling mail and never provided her with medical evidence that she could not perform her duties. She noted that when she became appellant's supervisor in June 1999 she noticed that the FMLA form was not current and she requested that appellant update the form. The supervisor indicated that this request was met with resistance. The supervisor further noted that when she questioned appellant regarding her FMLA or unscheduled absences appellant became upset. She indicated that it was proper for her to question appellant regarding the FMLA form. The supervisor noted that at that time there was no FMLA coordinator, so the forms were processed through the employee's supervisor. The affidavit from another supervisor noted that he was not aware of appellant's physical disabilities and indicated that appellant did not have a written request for light duty. A final decision on appellant's EEOC complaint had not been rendered.

The employing establishment submitted a letter of contravention dated April 4, 2001. The employing establishment indicated that appellant's supervisor, as an employee absence control supervisor, was required to inquire of employees about unscheduled absences, missing or incorrect clock rings. Every time the supervisor attempted to discuss an incorrect clock ring on April 25, 2000 and the FMLA/medical documentation with appellant she became visibly upset. Appellant maintained that her documentation was current, however, when the supervisor checked with the medical unit it was discovered the information was not current. The employing establishment contends that the supervisor acted without error or abuse and that appellant's allegations fall within the category of administrative or personnel actions and are not covered under the Federal Employees' Compensation Act.

By decision dated June 13, 2001, the hearing representative affirmed the Office's decision dated July 6, 2000 on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

The Board finds that the evidence fails to establish that appellant 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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.¹ 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.²

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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated June 13, 2001, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

Appellant alleged harassment on the part of her supervisors. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, 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.⁸ In the present case, appellant's supervisor indicated that she approached appellant regarding whether she clocked in lunch on April 25, 2000. The supervisor further inquired as to the discrepancies on appellant's leave slip and noted that she requested clarification from appellant regarding the leave slip. The supervisor noted that the FMLA leave forms should be submitted to her initially for approval before they are submitted to the medical unit. She noted that as an absence control supervisor it was proper procedure for her to question appellant regarding unscheduled absences and to request evidence if necessary. The supervisor further noted that it was her responsibility to inquire of an employee when there are improper clock rings. General allegations of harassment are not sufficient⁹ and appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.¹⁰ Appellant alleged that her supervisor made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence, to establish that the statements actually were made or that the actions actually occurred.¹¹ While the witness statements from the union steward and Barrie Par made references to the supervisor berating and asking appellant personal medical questions regarding the FMLA and the clock rings, which indicate that the supervisor had an aggressive style of managing, however, this evidence is insufficient to show that she harassed or discriminated against appellant.¹² The Board notes that vague allegations of a supervisor berating and taunting appellant are insufficient to establish appellant's claim that she was harassed. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor 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, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.¹³ Appellant also indicated that she filed an EEOC claim for harassment and discrimination, however, the Board further notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹⁰ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹¹ *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

¹² *Dennis J. Balogh*, 52 ECAB ____ (Docket No. 99-1512, issued January 25, 2001).

¹³ *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001).

occurred.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Many of appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹⁵ the Board held that 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. The Board noted, however, 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. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: (1) she was harassed and questioned by her supervisor regarding an incorrect clock ring for a lunch period on April 25, 2000;¹⁶ (2) she was harassed and questioned regarding her use of the FMLA, specifically the supervisor questioned why the leave form indicated the date of April 10, 1999, which was inconsistent with the March 23, 2000 date stamped at the medical unit;¹⁷ and (3) appellant's supervisor was harassing and discriminating against her because of her medical condition and restrictions and failed to provide her with light duty.¹⁸ Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus she has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant has also attributed her emotional condition to being forced to work beyond her restrictions indicating that her supervisor was harassing and discriminating against her because of her medical condition and restrictions and failed to provide her with light duty. The Board notes that assignment of duties beyond an employee's work tolerance limitations can be a compensable factor of employment.¹⁹ Dr. Rodriguez's note of April 27, 1999 recommended

¹⁴ *James E. Norris*, 52 ECAB ___ (Docket No. 98-2293, issued October 5, 2000).

¹⁵ See *Thomas D. McEuen*, *supra* note 2.

¹⁶ Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee. *Judy L. Kahn*, 53 ECAB ___ (Docket No. 00-457, issued February 1, 2002).

¹⁷ *Id.*; See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988) (the Board finds that allegations such as wrongly denied leave and improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.)

¹⁸ The assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable. *Barbara J. Latham*, 53 ECAB ___ (Docket No. 99-517, issued January 31, 2002).

¹⁹ See *Kim Nguyen*, 53 ECAB ___ (Docket No. 01-505, issued October 1, 2001).

light duty due to appellant's fainting spells and syncope. On April 17, 2000 appellant was asked by her supervisor to sweep mail, appellant refused indicating that this activity was beyond her restrictions. The record indicates that the supervisor exercised his discretion and determined that appellant's restrictions encompassed operating heavy machinery and equipment and did not encompass mail sweeping. The Board notes that the assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.²⁰ Thereafter, appellant presented with an April 18, 2000 report from Dr. Rodriguez noting restrictions on heavy pulling, lifting of greater than 10 pounds; and no operation of heavy equipment or motorized machinery. The supervisor provided appellant with a light-duty form on April 20, 2000 and requested that she have her doctor prepare and submit the form. The record establishes that the employer sought to get further information and clarification from appellant and her physician, however, the evidence does not suggest that appellant followed up on the request to have her physician prepare the light-duty form. Therefore, the Board finds that there is insufficient evidence to establish that appellant worked beyond her restrictions.

The decision of the Office of Workers' Compensation Programs dated June 13, 2001 is affirmed.

Dated, Washington, DC
June 5, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

²⁰ *Supra* note 18.