

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARIA D. WATERS and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 01-2203; Submitted on the Record;  
Issued June 4, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

Appellant, a 54-year-old letter carrier, filed a claim for benefits on March 1, 2001, alleging that she sustained emotional stress and anxiety caused by factors of her employment. She stated that she experienced stress because of a February 22, 2001 meeting with her supervisor, during which she told him that she had been forced to perform duties beyond her physical restrictions and that if this situation persisted she would be compelled to file an Equal Employment Opportunity claim or union grievance. Appellant also alleged that two coworkers were sexually harassing her. Finally, she alleged that, following her meeting with her supervisor, she had been approached in a threatening manner by a postal inspector and by a station master from another station, who questioned her about her meeting with her supervisor.

On February 27, 2001 Dr. Walter E. Afield, Board-certified in psychiatry and neurology and appellant's treating psychiatrist, submitted a treatment slip in which he stated that appellant would be unable to return to work for six weeks. In a report dated February 27, 2001, Dr. Afield related that appellant was experiencing pain in her right ankle, which she had fractured in August of the previous year. He stated that appellant told him that when she approached her supervisor to inform him that she was working beyond her physical restrictions and was being sexually harassed, management had behaved in an uncooperative and insensitive manner, resulting in emotional stress. Dr. Afield diagnosed major depression, anxiety reaction and stated that these conditions were causally related to her work. He advised that appellant was very "disorganized and confused" and needed time to get away from her work situation.

Appellant's supervisor, A. Berrios, submitted a one-page statement dated March 3, 2001 which rebutted appellant's allegations. He denied that appellant was being forced to perform duties or was given a workload which exceeded her physical restrictions. Mr. Berrios stated that

when appellant told him that working the customer service window was hurting her left foot he tried to provide her with a list of clerks that would handle this job to prevent further injury to her foot. He asserted that he had worked diligently to accommodate her condition and to assure that her workload was within her physical restrictions.

The employing establishment submitted a March 23, 2001 statement controverting appellant's claim that she had been harassed. The employing establishment noted that appellant had indicated in her statement that, after meeting with Mr. Berrios and telling him that she was being sexually harassed, another supervisor had called a meeting of her work division and had admonished them that sexual harassment would not be tolerated.

By letter dated April 6, 2001, the Office advised appellant that she needed to submit additional information in support of her claim. The Office requested that she submit additional medical evidence in support of her claim, including a comprehensive medical report and provide factual evidence, which would establish that she had developed an emotional condition caused by factors of her employment.

By decision dated May 22, 2001, the Office found that fact of injury was not established, as the evidence of record failed to establish that an emotional injury was sustained in the performance of duty.

By letter dated June 27, 2001, appellant's representative requested reconsideration. Appellant submitted reports from Dr. Afield dated April 15, April 26, June 1 and June 15, 2001 in which he essentially reiterated his previous findings and conclusions.

By decision dated August 31, 2000, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and a rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>1</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>2</sup>

With regard to appellant's allegations of harassment, it is well established that for harassment to give rise to a compensable disability under the Federal Employees' Compensation Act there must be some evidence that the implicated incidents of harassment did, in fact, occur.

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<sup>1</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>2</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>3</sup> The Board has underscored that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable 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.<sup>4</sup> The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.<sup>5</sup>

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that that she was harassed, mistreated or treated in a discriminatory manner by her supervisors. In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and that appellant has not submitted any evidence corroborating that she was harassed or discriminated against by the employing establishment, with regard to promotions, assignments or disciplinary actions.<sup>6</sup> As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.<sup>7</sup> For this reason, the Office properly determined that the alleged incidents of harassment constituted mere perceptions of appellant and were not factually established.

The Office properly found that appellant's allegations of sexual harassment by coworkers were not established as factual by the weight of evidence of record. The Office reviewed her specific allegations of harassment and found that it did not accept as factual that such harassment had occurred as she described. The Office found that appellant failed to submit any corroboration to substantiate her allegations of harassment.

The Board further finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel

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<sup>3</sup> *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>4</sup> *Norma L. Blank*, 43 ECAB 384 (1992).

<sup>5</sup> *Id.*

<sup>6</sup> *See Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>7</sup> *See Curtis Hall*, *supra* note 3.

matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>8</sup>

In this case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to appellant's allegations that she had been forced to perform duties beyond her physical restrictions or that management tolerated a situation where she was being sexually harassed by two coworkers. The statements submitted by appellant and her supervisor at the employing establishment substantiate that a meeting occurred on February 22, 2001. Appellant's supervisor, however, denied that appellant was being forced to perform duties or was given a workload which exceeded her physical restrictions. He stated that the employing establishment had endeavored to accommodate her physical condition and had attempted to ensure that her workload was within her physical restrictions. This factual scenario, as presented by both parties, does not constitute a factor of employment. In addition, appellant's discussions with a postal inspector and a station master, in which she claimed she was questioned about her meeting with her supervisor, also did not rise to the level of a compensable factor of employment. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.<sup>9</sup> Appellant has submitted insufficient evidence that these meetings were unreasonable administrative actions or that erroneous personnel actions were taken by the employing establishment in the course of or as a result of these meetings.

In addition, as appellant acknowledged, the employing establishment responded to her allegations of sexual harassment by coworkers by convening a division-wide meeting in which a management supervisor emphasized to the group that such behavior would not be tolerated. Thus, appellant has failed to submit sufficient evidence to corroborate her allegations that the employing establishment committed error or abuse in tolerating a situation involving sexual harassment.

Accordingly, a reaction to such factors does not constitute an injury arising within performance of duty. The Office properly concluded that in the absence of agency error or abuse such personnel matters were not compensable factors of employment.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>10</sup> Evidence that repeats

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<sup>8</sup> *Alfred Arts*, 45 ECAB 530 (1994).

<sup>9</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>10</sup> 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>11</sup>

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either previously considered and rejected by the Office in prior decisions or is not pertinent to the issue on appeal. Dr. Afield's reports are cumulative and repetitive of his previous reports, which are not relevant or pertinent because the Office has found that appellant failed to establish fact of injury. Additionally, the letter from appellant's representative failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated August 31 and May 22, 2001 are affirmed.

Dated, Washington, DC  
June 4, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> *Howard A. Williams*, 45 ECAB 853 (1994).