U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MALETA M. ATUATASI and U.S. POSTAL SERVICE,
WILLOW GLEN POST OFFICE, San Jose, CA

Docket No. 00-2002; Oral Argument Held October 10, 2001;
Issued May 17, 2002

Appearances: *Linda L. Harper*, for appellant; *Thomas G. Giblin, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition causally related to factors of her employment.

On February 11, 1998 appellant, then a 44-year-old markup clerk, filed an occupational disease claim alleging that her emotional condition was caused by trying to meet the production requirements of her job. She alleged that she was given inadequate training by Debi Silva, who was also rude to her, and that she did not receive a copy of New Employee Expectations when she began her training. However, she acknowledged that when she was offered another trainer, she declined, stating that her problem was simply the pressure of the production quota. Appellant alleged that supervisor Emi Kawamoto embarrassed her in front of co-workers at a meeting when she told appellant, "this job is not for you;" told her that she should have been a letter carrier; and also told a co-worker that appellant was stubborn. She alleged that Ms. Kawamoto gave her a day off near the end of her probationary period although she knew appellant was trying to meet her job goals. Appellant alleged that she was discriminated against because of her Samoan ethnic background because other employees who had not met their production goals during probation had not been terminated. She alleged that her productivity rate was reduced by machinery breakdowns and this fact was not considered when her production rate was calculated. Appellant was terminated from her position on January 26, 1998.

On January 26, 1998, supervisor Steven McArthur stated that appellant's job performance was rated as unacceptable in the areas of quantity and quality at the end of her 30-day, 60-day, and 80-day evaluation periods. He stated that appellant was given additional training but complained that she felt belittled when her mistakes were brought to her attention. Mr. McArthur stated that appellant was terminated because she did not demonstrate the ability to become an effective clerk.

In a statement dated February 18, 1998, Teresa D. Helsley, one of appellant's trainers, stated that appellant had difficulty in increasing her production speed without making increased errors. She stated that appellant was concerned about being able to handle the production speed which hindered her ability to perform her tasks in a satisfactory manner and she was defensive when Ms. Helsley tried to correct her errors. Ms. Helsley stated that appellant received the same training as other employees during their probationary period.

In a statement dated February 19, 1998, Ms. Kawamoto stated that she tried to help appellant reduce her errors, noting that the acceptable error rate for clerks was three percent or less and appellant consistently averaged over ten percent. She stated that she brought appellant's errors to her attention so that she could learn from them but appellant resented being told of her mistakes. Ms. Kawamoto stated that appellant was given additional training but she did not improve and was terminated for poor job performance. She stated that at a meeting appellant mentioned that keying mail hurt her back and Ms. Kawamoto responded that, "In that case, maybe this is not the job for you." Ms. Kawamoto denied telling appellant that she was stubborn or that she told appellant that she should have been a carrier. She explained that any comment about a carrier position was in the context of discussing other positions available at the employing establishment.

In a statement dated February 21, 1998, Mr. McArthur indicated that the individuals who trained appellant were competent and the documentation of her progress was very thorough, enabling management to concentrate on her weak points such as her difficulty in remembering basic information given early in the training. He stated that clerks were expected to process 750 pieces of mail per hour at the end of the probationary period, not 1,000, as alleged by appellant.[1] He noted that appellant had expressed her difficulty in understanding the difference between total pieces of mail processed in a given period and the rate of processing, the number of pieces processed per hour. Mr. McArthur indicated that extra training was given to appellant to help her meet production expectations without success and she declined additional training. He stated that appellant continued to make errors at the end of her probationary period that most clerks had corrected by then and she was terminated solely because her job performance was significantly below expectations, not, as she alleged, because of her ethnicity.

In a statement dated March 2, 1998, Debi L. Silva, one of appellant's trainers, stated that she did not believe that appellant's poor job performance was caused by her inexperience as a trainer. She stated that she was very patient with appellant, explained the job requirements thoroughly, and asked appellant questions to determine whether she understood what she was taught. Ms. Silva noted that appellant rarely asked questions and frequently forgot aspects of training that had been covered previously. She stated that appellant asked her about the production expectations and she indicated that she thought that the eventual goal was 800 to 1,00 pieces per hour but she advised appellant to talk to Mr. McArthur because he knew the different goals for each stage of training. Ms. Silva stated that appellant made many errors even though various tasks were explained to her numerous times.

[1] A New Employee Expectations form signed by appellant on November 14, 1997, indicated that production at the end of 30 days was expected to be 550 pieces of mail per hour, 650 at the end of 60 days, and 750 at the end of 80 days.

By decision dated May 13, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to compensable factors of employment.

By letter dated July 10, 1998, appellant requested an oral hearing before an Office hearing representative.

On February 22, 1999 a hearing was held before an Office hearing representative and appellant testified.

By decision dated May 20, 1999, issued June 7, 1999,[2] the Office hearing representative affirmed the Office's May 13, 1998 decision.

By letter dated June 17, 1999, appellant requested reconsideration and submitted new evidence.[3]

In a statement dated March 3, 1999, clerk Marlene Hardiman stated that she had experienced problems with machines breaking down and noted that no adjustment was made in recording an employee's production rate when breakdowns occurred.

In a statement dated March 28, 1999, received by the Office on June 3, 1999, appellant alleged that Mr. McArthur told her that she needed to be able to process 1,000 pieces per hour by the end of 80 days. She alleged that her job performance was adversely affected by equipment that frequently broke down.

Appellant also submitted medical evidence in support of her claim. In a report dated January 28, 1998, Martha Chiu, a neuropsychologist, diagnosed an adjustment disorder secondary to job stressors which included possible discrimination against appellant because of her ethnic background and the fact that she asked many questions in order to properly learn her job. Appellant was also upset because her supervisor publicly humiliated her.

In a report dated April 10, 1998, Dr. Perry Segal, a Board-certified psychiatrist and neurologist, indicated that appellant's depression appeared to have been caused by inadequate training for her job, being pressured with productivity goals, being belittled by her supervisor in front of co-workers, and being penalized for poor productivity even though her poor production was frequently due to broken machinery. She felt that she had been unfairly terminated because other employees had not been terminated despite failing to meet productivity goals during their probationary period.

[2] June 7, 1999 is the date that a copy of the decision was sent to appellant's representative.

[3] Included in the new evidence were copies of newspaper articles about the employing establishment. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee; *see William C. Bush*, 40 ECAB 1064, 1075 (1989).

In a report dated May 3, 1999, Dr. George D. Karalis, a psychiatrist, stated his opinion that appellant's depression was caused by being pressured and overworked to handle more than 750 pieces of mail per hour with machines which frequently broke down, reducing her productivity.

By decision dated March 1, 2000, the Office denied modification of its May 20, 1999 decision.

The Board finds that this case is not in posture for a decision.

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 his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4] 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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[6] 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.[7]

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.[8] 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.[9]

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[4] 5 U.S.C. §§ 8101-8193.

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

[6] *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[7] *See Effie O. Morris*, 44 ECAB 470, 473 (1993).

[8] *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

[9] *Id.*

In this case, appellant attributed her emotional condition to a number of employment incidents and conditions. The Board must, thus, initially determine whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that Debi Silva gave her inadequate training and that Ms. Silva was rude to her. However, she acknowledged that when she was offered another trainer, she declined, stating that her problem was simply the pressure of the production quota. In a statement dated March 2, 1998, Ms. Silva stated that she did not believe that appellant's poor job performance was caused by her inexperience as a trainer. She stated that she was very patient with appellant, explained the job requirements thoroughly, and asked appellant questions to determine whether she understood what she was taught. Ms. Silva noted that appellant rarely asked questions, frequently forgot aspects of training that had been covered previously, and made many errors even though various tasks were explained to her numerous times. In a statement dated February 18, 1998, Ms. Helsley, one of appellant's trainers, stated that appellant received the same training as other employees during their probationary period. In a statement dated January 26, 1998, Mr. McArthur, appellant's supervisor, noted that appellant had been given additional training but complained that she felt belittled when her mistakes were brought to her attention. In a statement dated February 21, 1998, Mr. McArthur indicated that the individuals who trained appellant were competent and the documentation of her progress was very thorough, enabling management to concentrate on her weak points such as her difficulty in remembering basic information given early in the training. Considering all the evidence, appellant's allegations concerning Ms. Silva and her training are not deemed compensable factors of employment.

Appellant has also alleged that the employing establishment harassed her and discriminated against her because of her Samoan background. She alleged that other employees who had not met production goals during the probationary period were not terminated. Appellant alleged that supervisor Emi Kawamoto embarrassed her in front of co-workers at a meeting when she told appellant, "this job is not for you;" told her that she should have been a letter carrier, and also told a co-worker that appellant was stubborn. She alleged that Ms. Kawamoto gave her a day off near the end of her probationary period although she knew appellant was trying to meet her job goals. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[10] However, 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.[11] In a statement dated February 19, 1998, Ms. Kawamoto stated that she brought appellant's errors to her attention so that she could learn from them but appellant resented being told of her mistakes. She stated that at a meeting appellant mentioned that keying mail hurt her back and Ms. Kawamoto responded that, "In that case, maybe this is not the job for you." Ms. Kawamoto denied telling appellant that she was stubborn or that she told appellant that she should have been a carrier. She

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

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

explained that any comment about a carrier position was in the context of discussing other positions available at the employing establishment. Mr. McArthur stated that appellant was terminated at the end of her probationary period because her job performance was significantly below expectations, not, as she alleged, because of her ethnicity. In this case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.[12] Thus, appellant has not established a compensable employment factor under the Act.

Appellant alleged that her emotional condition was caused by trying to meet production goals.[13] She also alleged that her job performance was adversely affected by equipment that frequently broke down. Mr. McArthur stated that appellant's job performance was rated as unacceptable in the areas of quantity and quality at the end of her 30-day, 60-day, and 80-day evaluation periods. Trainer Ms. Helsley stated that appellant had difficulty in increasing her production speed without making increased errors. She stated that appellant was concerned about being able to handle the production speed which hindered her ability to perform her tasks in a satisfactory manner. In a statement dated March 3, 1999, clerk Marlene Hardiman stated that she had experienced problems with machines breaking down and noted that no adjustment was made in recording an employee's production rate when breakdowns occurred.

The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.

In *Joseph A. Antal*,[14] a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Georgia F. Kennedy*,[15] the Board, citing the principles of *Cutler*, listed employment factors that would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines.

In this case, appellant has alleged that her emotional condition was caused by the pressure of trying to meet the production standards of her job. On remand, the Office should consider whether appellant's attempt to meet her job production requirements constituted a compensable employment factor. If the Office finds that this factor is a compensable factor of employment, it should then consider the evidence to determine whether this factor caused or aggravated appellant's emotional condition.

[12] *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).

[13] Appellant also alleged that she did not receive a copy of production expectations at the beginning of her training period. However, the record shows that appellant signed a New Employee Expectations form on November 14, 1997 and the form indicated the expected production for each training period.

[14] 34 ECAB 608, 612 (1983).

[15] 35 ECAB 1151, 1155 (1984).

The March 1, 2000 and May 20, 1999 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
May 17, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member