

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIE A. WALKER and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

*Docket No. 01-2031; Submitted on the Record;
Issued May 3, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

On March 16, 2001 appellant, then a 43-year-old mailhandler, filed a traumatic injury claim alleging that, on March 13, 2001, she suffered emotional distress while representing herself in an Equal Employment Opportunity Commission (EEOC) hearing. Appellant stopped work on March 15, 2001 and returned to work on April 4, 2001. By decision dated May 30, 2001, the Office of Workers' Compensation Programs denied her claim finding that she failed to establish any compensable factors of 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 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.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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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).

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

Appellant attributed her emotional condition to events that occurred on March 13, 2001, when she represented herself at an EEOC hearing, which culminated in a denial of her claim that same day. She described the events leading to her EEOC claim, alleging that on August 16, 1999 she worked outside of her physical restrictions⁷ and developed such sore muscles that she called in sick for over two weeks. She returned to work on September 3, 1999 and on the morning of September 4, 1999, while performing her duties, she again pulled some muscles in her legs. Appellant stated that she did not report any injury until the next day, because she was not sure if the pain would persist and consequently, was issued a letter of warning for failure to immediately report an injury. On September 9, 1999 she reinjured her finger while throwing bundles of magazines onto a conveyer. On October 4, 1999 appellant received a 14-day suspension for failing to work in a safe manner. She stated that she filed a grievance regarding these two disciplinary actions, but was still awaiting arbitration. Appellant, a caucasian, further stated that, because an African-American coworker had engaged in much worse conduct and had not received any disciplinary actions, she believed that she was being harassed and discriminated against and therefore filed her claim with the EEOC. As she worked the midnight shift, appellant stated that she requested a schedule change for the day before the hearing, but was told she could only have a schedule change for the day of the hearing and possibly afterward, if it lasted too long. Appellant asserted that the hearing, held on March 13, 2001, lasted 13 hours and was emotionally devastating and resulted in a bench denial of her claim. Afterwards she was so stressed out emotionally and physically, that she was unable to sleep and needed to seek medical help. Appellant concluded that, after the hearing, her supervisors continued to harass her, cut an

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.*

⁷ Appellant asserted that she was restricted from lifting more than 25 pounds after she broke her finger at home.

hour from her pay for the hearing and denied her request for dependent sick leave when her husband had to have heart surgery.

Although appellant's EEOC claim derived from her employment and, therefore, is tangentially related thereto, the Board has held that stress resulting from participation in EEOC proceedings will not afford coverage under the Act. The actions of an administrative agency in reviewing and investigating charges and rendering decisions do not relate to appellant's assigned duties and are not compensable employment factors.⁸ To the extent that appellant is alleging that the employing establishment engaged in improper disciplinary actions, improperly assigned work duties, improperly denied her request for a schedule change and wrongly denied dependent sick leave, the Board finds that these allegations 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.⁹ Although the handling of disciplinary actions, leave requests, and the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁰ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ Under the circumstances of this case, appellant has submitted no evidence supporting a finding that the employing establishment erred or acted abusively in issuing either of its disciplinary actions, nor in the assignment of her work duties or the denial of her leave and schedule change requests. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

With regard to appellant's claim that she was singled out for harassment and discriminated against by her supervisors, the evidence does not establish this as an employment factor.¹² For harassment to give rise to a compensable disability under the Act, there must be some evidence that the harassment did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³ Grievances and EEOC complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁴ Appellant has failed to establish a factual basis for her allegations that her claimed emotional condition was caused in part by harassment from the employing establishment.

⁸ *Blondell Blassingame*, 48 ECAB 130 (1996).

⁹ 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).

¹⁰ *Id.*

¹¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² See *Kathleen D. Walker*, 42 ECAB 603 (1991); *Ruthie Evans*, 41 ECAB 416 (1990).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

¹⁴ *Parley A. Clement*, 48 ECAB 302 (1997).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁵

The May 30, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 3, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).