

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN J. MEDINA and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 02-585; Submitted on the Record;
Issued November 19, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

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 August 3, 1999 appellant, then a 38-year-old mail clerk, filed a claim for occupational disease alleging that she developed major depression, panic attacks and anxiety due to harassment, disparate treatment and stress at work. She has a prior accepted claim for building related asthma, for which she has received appropriate compensation benefits. Appellant was removed from the employing establishment effective August 6, 1999 for poor attendance. By decision dated January 13, 2000, the Office of Workers' Compensation Programs denied appellant's claim finding that she failed to establish any compensable factors of employment. Appellant requested reconsideration and by decision dated March 14, 2001, the Office found the newly submitted evidence insufficient to warrant modification of the prior decision. Following a second reconsideration request, in a decision dated December 14, 2001, the Office again declined to modify its prior decision denying appellant's claim for an employment-related emotional condition.

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the

employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

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.² 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.³

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.⁴ 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.⁵

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

Appellant has primarily attributed her emotional condition to the actions of her supervisors at the employing establishment. She stated that on or around May 1986 she developed employment-related asthma and began to miss work, which resulted in her being harassed and treated unfairly. Appellant alleged that the employing establishment disciplined her for poor attendance, and eventually terminated her for being absent without leave from November 14, 1998 through June 2, 1999, even though her absences were due to her employment-related medical condition. She stated that her termination was also in violation of a last chance agreement between herself and the employing establishment. Appellant also stated that her paychecks were frequently short and that despite her frequent requests that her supervisors stop people from smoking at the entrance to the building, which bothered her asthma, nothing was done about this situation. She also asserted that she was discriminated against when she was denied permission to park in the underground parking lot. Appellant asserted that on

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

² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁴ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁵ *Id.*

July 23, 1999, Supervisor Schram took her to the hospital for an asthma attack, but after driving her back to the employing establishment, he made her wait in the cafeteria and told her she would have to fill out paperwork. She also asserted that after she was medically cleared to return to work on November 14, 1998, the employing establishment refused to allow her to return to work until June 2, 1999. In addition, subsequent to receiving her letter of removal, appellant asserted that she was denied access to her time card and identification (ID) badge, and claim forms, and on August 5, 1999, she was humiliated by being physically escorted from the premises.

The Board initially notes that with respect to appellant's accepted building related asthma condition, the Board has held that an emotional condition related to chronic pain and other limitations resulting from an employment injury is covered under the Act.⁶ However, while appellant discusses her asthma condition and mentioned that stress aggravates asthma, appellant does not attribute her current emotional condition to the asthma itself, but rather focuses exclusively on what she considers to be harassment and discrimination by her supervisors. Therefore, the Board finds that appellant has failed to establish that her building related asthma constitutes a compensable employment factor with respect to her August 3, 1999 claim.

Regarding appellant's allegations that the employing establishment wrongly denied leave, issued disciplinary actions for poor attendance, issued incorrect paychecks, denied her access to her timecard, claim forms and ID badge, denied her request for an underground parking permit, improperly refused to remove the smokers from the entrance to the building and made her wait in the cafeteria to fill out paperwork after leaving work to go to the hospital, 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.⁷ Although these actions are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁸ 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.⁹ In this case, there is no evidence of error or abuse on the part of the employing establishment. While the employing establishment acknowledges that appellant has an accepted claim for building related asthma, and that it was later accepted that she was off work due to her asthma from October 19, 1998 through November 13, 1998, the employing establishment explained that appellant failed to provide any medical evidence which established that she was unable to work between November 14, 1998 and June 2, 1999. With regard to appellant's allegations that she was not allowed to return to work following her medical release on November 14, 1998, the employing establishment stated

⁶ *Clara T. Norga*, 46 ECAB 473 (1995); *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

⁷ *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).

⁸ *Id.*

⁹ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

that while appellant's medical release was forwarded to appellant's supervisor, when appellant failed to hear from her supervisor within a reasonable amount of time she should have taken the initiative to contact her supervisor to verify her return to work date. However, appellant did not call her supervisor concerning her ongoing absence and did not request any type of leave from November 1998 through April 1999, which prompted the agency to begin removal proceedings. With respect to the alleged violation of the last chance agreement, the employing establishment explained, and provided documentary support, that the agreement explicitly stated that it must be signed by appellant's designated representative in order to be valid. However, as appellant's representative never signed the agreement, it never became effective. Regarding appellant's allegation that she was improperly denied an indoor parking permit, the employing establishment explained that underground parking was very limited and subject to special application. The agency added that there was ample employee parking directly across the street and that appellant had provided no medical documentation than she was medically restricted from walking across the street. With respect to the agency's refusal to remove the smokers from outside the entrance to the building, the employing establishment explained that this was a posted designated smoking area, and that there were two alternative smoke free entrances to the building which appellant could have used. Regarding appellant's remaining allegations, the employing establishment has submitted several statements explaining that these actions were undertaken in the normal course of business and appellant has provided no evidence of any error or abuse. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

In addition to the above allegations, appellant asserted that in September 1985 she was called into a meeting and told by managers and a union steward, whom she did not know, to sign a document so that she could keep her job. She asserted that she was treated harshly and not allowed to read over the document first or keep a copy of the document. Appellant stated that a supervisor threatened to fire her if she did not return to work after injuring her hand in a conveyor belt. She also asserted that she injured her hand in the conveyor belt because she was improperly trained. Appellant asserted that Supervisors Hankins and Buckley teased her and harassed her with threats to send her for a fitness-for-duty examination. She asserted that after she received a new bid in 1991 a supervisor required her to work in different areas therefore not allowing her to get the hang of her new job. Appellant stated that coworkers would yell for assistance, waking her from her lunchtime nap, but when she hurried to help them, she would discover that they too had gone to lunch. When the coworkers returned from lunch, they laughed at her. Appellant also asserted that Supervisor Price threatened to fire her if she was unable to perform her duties. She alleged that one night when she was feeling unwell Supervisor Hankins denied her request to leave because she had been missing so much work. Appellant stated that as a consequence, she collapsed and had to be taken to the hospital in an ambulance. With respect to Supervisor Young in particular, appellant asserted that he would instruct her to have her physician rewrite his notes, and would argue with her about whether she had an accepted claim for asthma. In addition, he denied that she was sick and threatened her with a fitness-for-duty examination. She alleged that Supervisor Young left her personnel file out where others could see it, told her coworkers she was a drug addict and revealed to them all of the medications she was taking. He allegedly also made her work flats, which was outside of her work restrictions. Appellant also asserted that Supervisor Ybarra raised his voice to her and that between October 19, 1998 and November 13, 1998, while she was off work due to asthma and tried to call in sick, Supervisors Britt and Buckley yelled at her, started arguments with her, told her she

did not have an accepted claim and threatened to fire her for committing fraud. To the extent that these disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her 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 the present 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 Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided insufficient specific details as to dates, times and places, and insufficient corroborating evidence, such as detailed witness statements, to establish that the specific statements actually were made or that the specific actions actually occurred.¹³ In addition, the employing establishment has provided several written statements denying these allegations. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

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.¹⁴

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

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

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 *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁴ 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).

The December 14 and March 14, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.¹⁵

Dated, Washington, DC
November 19, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ By letters dated July 11 and 17 and November 1, 2001, appellant, through counsel, requested that her claim be accepted for panic disorder, as a consequential injury of her accepted building related asthma condition. In a decision dated November 16, 2001, the Office denied appellant's claim for consequential anxiety disorder. On appeal appellant, through counsel, specifically appealed only the Office's denial of her claim for an emotional condition.