

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAKSHA M. AMIN and U.S. POSTAL SERVICE,
POST OFFICE, Newtown, CT

*Docket No. 02-1016; Submitted on the Record;
Issued November 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On June 22, 2000 appellant, then a 48-year-old postal clerk, filed a claim for stress which she attributed to harassment by management. Appellant alleged that on March 8, 2000 she was sorting flats from a bucket. She commented that the addresses did not all face the same direction, making it harder to grab a handful of mail and sort. Appellant stated that it was faster to sort the mail from the bucket. She stated that the postmaster, Mr. Marciniak came up behind her and yelled at her that she was suppose to hold the flats in her hand and sort them. Appellant commented that other clerks had other methods of sorting. She related that on June 2, 2000 she was asked to sort flats but found the case was full. There was also a brown bag behind her with newspapers that had to be sorted. Appellant stated that she tried to empty the bag, clear the cart and clear the case. However, her supervisor instructed her to sort the flats. She noted that the case was full both ways. Appellant, therefore, worked on clearing the case. She stated that the supervisor came up behind her and demanded that she sort the flats. Appellant claimed that another employee who had a full case and was pulling down the mail did not receive the same instructions that she received. She told her supervisor not to treat her like a child. Appellant indicated that she was called into Mr. Marciniak's office and told that if she did not want to sort flats, she should go home. She went home that day. On June 5, 2000 appellant was helping a coworker in the cage with certified letters and went to another coworker to ask her to check on the certified mail since she knew the scheme for the area. Appellant indicated that Mr. Marciniak came to the coworker's case and began arguing with her. She related that she had a parcel that she could not move because Mr. Marciniak was in the way so she left it at the coworker's case. Appellant stated that the postmaster asked her why she was leaving the parcel behind. She informed him that she could not move it yet so she would leave it until he finished arguing with the coworker. Appellant indicated that Mr. Marciniak took her to his office and threatened to report her for mishandling a registered parcel.

On June 22, 2000 appellant was again instructed to sort the flat mail. She indicated that 15 minutes later, Max Blatt, a supervisor, came up behind her and demanded that she hold the mail in her hand and sort. Appellant stated that she tried to explain that she was cleaning up the mail that was dumped in a pile on a ledge by the previous sorter. She noted that she was surrounded by buckets of mail and other equipment, which made it hard for her to move. Mr. Blatt insisted that appellant grab more mail in her hand while sorting. Appellant commented that with mail piled so that some addresses were upside down and labels facing in different directions, she could not sort more than one piece of mail at a time. Mr. Blatt left but returned five minutes later and, according to appellant, told her in a harsh tone to grab more flats in her hand while sorting. She went to report the incident to her union steward. As she was returning to her case, Mr. Marciniak came over to her at a fast pace. Appellant stated that he stormed over, as if to assault her and stated in an angry, harsh, loud voice that appellant was not to leave the work area. He told her to stay where she was and sort the flats, grabbing more in her hand. Appellant indicated that she started to feel pressured and began crying uncontrollably. When she approached Mr. Blatt, he instructed appellant to sit in the break room. She stated that Mr. Marciniak approached her five minutes later and told her in a firm voice to go to his office. When he asked the cause of the problem, appellant cited the harsh treatment she had received and requested that she be taken for medical treatment. She stated that after the June 22, 2000 incident, she had nightmares of the postmaster standing next to her and yelling at her.

Appellant submitted a July 10, 2000 report from Dr. Joseph Williams. He stated that appellant appeared to have an adjustment disorder which most likely stemmed from her current stressors. Dr. Williams noted that appellant related her condition to her work environment.

In a July 25, 2000 statement, Mr. Marciniak stated that on June 22, 2000 he observed appellant sorting flat mail one piece at a time, rather than the employing establishment's requirement that she hold one to two inches of mail in her hand at a time. He instructed Mr. Blatt to observe appellant. After a short period of observation, Mr. Blatt went to appellant and instructed her on the proper procedure. Mr. Marciniak noted that when Mr. Blatt left, appellant went to talk to her union steward who told her to return to her case and informed her of the proper procedure to request time to talk with him. Mr. Marciniak stated that he also addressed this issue with appellant. He related that at 9:30 a.m. appellant indicated that she wanted to complete a form requesting compensation for a traumatic injury. She was given the form, which she completed. Appellant then requested that she be taken for medical treatment. Mr. Marciniak stated that appellant had a history of similar behavior, becoming argumentative and disruptive whenever she was given any instructions. He noted that appellant had been given a seven-day suspension for an incident that occurred on June 19, 2000 and on two occasions had left work rather than follow instructions. Mr. Marciniak stated that, in the March 8, 2000 incident, he talked to appellant calmly but she became argumentative. In the June 2, 2000 incident, he indicated that appellant ignored his repeated instructions to sort the mail while a coworker dumped the mail for her. She also began pulling down mail when he instructed her to push it to the back of the case and sort the flats, commenting that the cases could hold two rows of flat mail. Mr. Marciniak stated that appellant became loud and argumentative. When she refused to follow his instructions, he called her to his office and told her that if she did not want to sort the flat mail, she could leave. He noted that appellant promptly left work that day. Mr. Marciniak discussed the June 5, 2000 incident, stating that appellant was not doing her job

by talking to her coworker and lied when she said she had 100 certified letters for her coworker. He stated that appellant was disciplined for this incident and was retaliating by filing a compensation claim. On June 22, 2000 when Mr. Blatt approached appellant, she became argumentative and loud. He subsequently observed her talking to the union steward. Mr. Blatt went to her to inform her in a passive tone of the proper procedure for seeking union time. He stated that appellant became loud and argumentative. Mr. Blatt walked away and was later informed that appellant was crying. He asked her what caused her problem. Mr. Blatt related that appellant stated she did not like the harsh treatment. Mr. Marciniak arranged to have appellant taken for medical treatment. He denied that anyone was ever harsh or loud to her. Mr. Marciniak contended that appellant would not stand for management to tell her anything but became loud and argumentative with managers and coworkers.

In a February 26, 2001 statement, Mr. Blatt denied talking to appellant harshly on June 22, 2000. He stated that he had never yelled at an employee. Mr. Blatt noted that he twice instructed appellant that day on the proper procedure to sort flat mail and did not observe other clerks sorting mail in the same manner as appellant. He stated that he observed Mr. Marciniak talk to appellant and did not hear him use a loud or harsh voice toward her. Mr. Blatt noted that when appellant came to him later stating that she need medical attention, he treated her with concern, relayed her problem to Dr. Marciniak and took her for medical treatment. He commented that appellant was not crying or shaking while he drove her for medical treatment.

In an April 2, 2001 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that her alleged injury was the result of factors of employment within the performance of duty as she alleged.

Appellant requested a hearing before an Office hearing representative. At the hearing, she described the incidents, which she claimed caused her condition. She submitted several statements from coworkers in support of her claim. In a July 24, 2000 statement, one coworker stated that on June 22, 2000, he saw Mr. Marciniak and the supervisor pestered appellant excessively. He noted appellant was taken into Mr. Marciniak's office and came out crying. The union steward addressed his participation in a meeting concerning the June 5, 2000 incident. Kelly McLain stated that at the June 2, 2000 incident, Mr. Marciniak told appellant in a "mean, menacing tone," to hold more mail in her hand. Ms. McLain expressed her opinion, that appellant was holding enough mail in her hands but Mr. Marciniak was "just busting her chops." Ms. McLain noted that Mr. Marciniak talked to appellant on the matter on more than one occasion. Ms. Leslie Yeh stated that, in regard to the June 2, 2000 incident, she heard Mr. Marciniak yelling at appellant on how to sort the mail.

In an April 21, 2001 statement, another coworker stated that in the past year he had witnessed Mr. Marciniak approach appellant and question her flat sorting methods. He stated that Mr. Marciniak's manner and approach was intimidating and degrading, leaving appellant in a state of despair, totally flustered and crying.

In a December 21, 2001 decision, the Office hearing representative found that the actions of appellant's supervisors in instructing her were administrative actions and, therefore, were not compensable factors of employment. She stated that the witness statements only confirmed what the supervisors said to appellant and did not support appellant's claim of supervisory harassment.

The Board finds that appellant has not established that the incidents she alleged caused her condition occurred within the performance of duty.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant alleged that her emotional condition was due to harassment by her supervisors. The actions of a supervisor, which an employee characterizes, as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁴

In this case, appellant alleged that Mr. Marciniak and Mr. Blatt yelled at her or talked to her in harsh tones in instructing her on how to sort flat mail. She claimed that other employees who sorted mail in the same way were not approached at all by the supervisors. Mr. Marciniak and Mr. Blatt denied that they ever yelled at appellant or talked to her in a harsh tone. Verbal altercations, if proven, may constitute a compensable factor of employment.⁵ However, a claimant's feeling or perception that a form of criticism or disagreement is unjustified,

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

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Joan Juanita Greene*, 41 ECAB 760 (1990).

⁵ *Herman W. Thornton*, 39 ECAB 875 (1988).

inconvenient or embarrassing is self-generating and should not give rise to coverage under the Act unless there is objective evidence that the interaction with the supervisor was, in fact, abusive.⁶ Appellant submitted statements from four coemployees, however, these statements are not sufficient to establish appellant's allegations of verbal abuse by her supervisors. There is insufficient evidence to establish that appellant's supervisors were abusive in their actions toward appellant. She, therefore, has not established that the administrative actions of the employing establishment were in error or abusive. As a result, she has not established that she sustained her emotional condition within the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated December 26 and April 2, 2001 are affirmed.

Dated, Washington, DC
November 21, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ *Daniel B. Arroyo*, 48 ECAB 204 (1996); *Tanya A. Gaines*, 44 ECAB 923 (1993).