

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

*Docket No. 01-465; Submitted on the Record;
Issued October 29, 2002*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's subpoena requests; and (2) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On July 21, 1999 appellant, then a 51-year-old postal clerk, filed an occupational disease claim, alleging that factors of employment caused stress. She stopped work that day.¹ By letter dated August 12, 1999, the Office informed appellant of the type evidence needed to support her claim. In response, appellant submitted medical evidence, personal statements, supporting statements and additional correspondence and documentation. The employing establishment controverted the claim and submitted witness statements.

By decision dated January 27, 2000, the Office denied the claim on the grounds that appellant did not sustain an injury in the performance of duty. On February 7, 2000 appellant requested a hearing and submitted additional evidence. By letter dated March 12, 2000, she requested that witnesses be subpoenaed for the hearing. In a June 16, 2000 decision, an Office hearing representative denied appellant's subpoena request. At the hearing, held on June 27, 2000, she testified that she had missed intermittent periods since the claim was filed and began working restricted duty on July 20, 1999. She further testified regarding her claimed condition. In an October 26, 2000 decision, an Office hearing representative affirmed the January 27, 2000 decision and reiterated the denial of appellant's subpoena request. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference.

The Board finds that the Office did not abuse its discretion in denying appellant's subpoena request.

¹ Appellant had a previous claim before the Board. In a June 14, 2001 decision, Docket No. 99-1319, the Board affirmed an Office decision dated December 3, 1998, which denied appellant's claim that she sustained an emotional condition in the performance of duty. The factors claimed were for the period up to April 23, 1998.

Section 8126 of the Federal Employees' Compensation Act provides that the Secretary of Labor, on any matter within her jurisdiction, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles.² This provision gives the Office discretion to grant or reject requests for subpoenas. Office regulations state that subpoenas for documents will be issued only where the documents are relevant and cannot be obtained by any other means. Subpoenas for witnesses will be issued only where oral testimony is the best way to ascertain the facts. In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained. The Office hearing representative retains discretion on whether to issue a subpoena. The function of the Board on appeal is to determine whether there has been an abuse of discretion.³ In the instant case, appellant did not fully explain why the testimony was relevant nor demonstrate that the requested testimony could not be obtained by other means. The Office, therefore, did not abuse its discretion in denying the request.

The Board further finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

To establish that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁵

Administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.⁶ Where disability results from an employee's emotional reaction to certain administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, the disability does not fall within coverage of the Act.⁷ However, an administrative or personnel matter will be considered an employment factor where the evidence discloses error

² 5 U.S.C. § 8126.

³ See *Gregorio E. Conde*, 52 ECAB ____ (Docket No. 00-2362, issued June 27, 2001).

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁷ *Michael L. Malone*, 46 ECAB 957 (1995).

or abuse on the part of the employing establishment.⁸ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.¹⁰ Coverage under the Act will attach if the factual circumstances surrounding an administrative or personnel action establish error or abuse by employing establishment superiors in dealing with a claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.¹¹

In this case, appellant alleged that her emotional condition was caused by a number of factors including that the employing establishment retaliated against her for filing a previous claim, that the union harassed her because she was not a member, that her personal information was inappropriately released, that management failed to stop the harassment, that both management and the Office inappropriately handled her previous claim, that she was inappropriately disciplined and that she was harassed by management, particularly Gary Shafer. She also alleged that her condition was caused by an altercation with Mr. Shafer on May 28, 1999.

The Board has held that matters relating to the handling of a workers' compensation claim are administrative in nature and do not arise in the performance of duty.¹² While the record indicates that on June 29, 1999 a grievance settlement was entered regarding the release of her personal data, the grievance was settled without prejudice to either party. Similarly, while appellant received a letter of warning regarding the May 28, 1999 altercation, the employing establishment indicated that it had a zero tolerance policy regarding workplace fighting and the Board has held that disciplinary matters concerning an oral reprimand, discussions or letters of warning for conduct pertain to administrative actions are not a duty of the employee.¹³ Finally, the Board has held that matters pertaining to union activities are not deemed employment factors.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to these claimed factors.

Appellant has also alleged that harassment and discrimination on the part of her supervisors and coworkers contributed to her claimed stress-related condition. 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 her regular

⁸ *Elizabeth Pinero*, 46 ECAB 123 (1994).

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *Mary L. Brooks*, 46 ECAB 266 (1994).

¹¹ *Sandra Davis*, 50 ECAB 450 (1999).

¹² *Bettina M. Graf*, 47 ECAB 687 (1996).

¹³ *Gregory N. Waite*, *supra* note 6.

¹⁴ *See Dinna M. Ramirez*, 48 ECAB 308 (1997).

duties, these could constitute employment factors.¹⁵ 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.¹⁶ 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, and appellant provided no corroborative evidence.¹⁷ Thus, she did not establish a compensable factor in this regard.

Appellant also attributed her emotional condition to an altercation with a coworker, Mr. Shafer, on May 28, 1999, pertaining to where their work locations would be situated that day. The evidence is insufficient to establish that Mr. Shafer harassed appellant, as alleged, and does not establish he called her names or made any untoward gestures or comments. The Board thus finds that this incident does not constitute a factor of employment.

The Board therefore finds that, as appellant has not established a compensable employment factor, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.¹⁸

The decision of the Office of Workers' Compensation Programs dated October 26, 2000 is hereby affirmed.

Dated, Washington, DC
October 29, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁶ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁷ *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).

¹⁸ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).