

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PRISCILLA D. COLBERT and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 02-1142; Submitted on the Record;
Issued October 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

Appellant, a 43-year-old CFS-clerk, filed a claim for benefits on December 6, 2000 alleging that she sustained emotional stress and anxiety caused by factors of her employment. She attributed her emotional condition to an incident which occurred on October 23, 2000 when she was sent home from her job while on light duty as there was no work for her. In an employee narrative, dated October 23, 2000, appellant advised that she was off work from September 23, 1999 to September 22, 2000 with a work-related injury and had returned to work in a limited-duty capacity. She related that after the Office had closed her claim, she was still working with limitations and, suddenly, there was no work available for her within her limitations. She advised that she was sent home on October 23, 2000 by her supervisor, Mark Mullins and was told to call him or send some documentation when her medical restrictions were lifted and she could return to work. Appellant stated that a week later her lifting restrictions were decreased and she gave the paperwork to her supervisor on October 30, 2000. She stated that after a week passed with no call from her supervisor, she started to get worried, sick and depressed. After numerous calls to the employing establishment, appellant advised that she returned to work on November 17, 2000. She related that the first day or two was very hard because the unit had known she was sent home and she was embarrassed. Appellant further related that she heard her coworkers making remarks about her on November 20, 2000. She indicated that one coworker said, "Oh you are back, how long before you are out again?" Another coworker questioned her about her lifting restrictions. Appellant stated that she felt humiliated, betrayed and stressed. She submitted two CA-20 forms from Dr. Anil C. Nalluri, a Board-certified psychiatrist, dated December 2 and 29, 2000 which diagnosed post-traumatic stress disorder.

In a December 11, 2000 letter, the employing establishment controverted appellant's claim. It related that appellant indicated that she was "stressed out" because they have not provided her with "light[-]duty" work since her job-related claim A9-456621 was terminated by the Office in a letter dated October 3, 2000. A copy of the decision was provided. The employing establishment further related that appellant grieved the issue through her union and that it had been denied at both step 1 and step 2. A copy of the denial of appellant's grievance at step 2 was provided. The employing establishment stated that she was not entitled to "limited duty" due to the termination of her compensable injury. It further stated that the assignment of "light duty" was administrative in nature and did not fall within the coverage of the Federal Employees' Compensation Act.

By letter dated January 17, 2001, the Office advised appellant that her claim was based on the fact that her supervisor sent her home because there was no work available within her limitations. The Office advised her that a final decision had been issued on October 3, 2000 terminating her benefits because she had no remaining residuals due to an August 11, 1999 work injury. The Office stated that, therefore, appellant's current claim was based on an administrative issue and was not compensable. The Office stated that if appellant wished to further pursue the claim, additional information needed to be submitted within 30 days. No additional information was received.

By decision dated May 15, 2001, the Office found that fact of injury was not established, as the evidence of record failed to establish that an emotional injury was sustained in the performance of duty.

By letter dated January 17, 2002, appellant's attorney requested reconsideration. A medical report dated October 20, 2001 from Dr. A. James Giannini, a psychiatrist, was submitted.

By decision dated February 19, 2002, the Office denied review on the grounds that the evidence was irrelevant in nature and thus, was not sufficient to require the Office to reopen its prior decision.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and a rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.³

In this case, appellant indicated that she was sent home on October 23, 2000 by her supervisor because there was no work available for her within her physical limitations. This is not a case in which appellant has alleged being required to work beyond her set physical restrictions.⁴ Rather, her claim is focused on the administrative process by which the employing establishment assigned her to light-duty work and not to any inability to perform her light-duty job assignments.⁵ Her emotional reaction to instructions that she return home due to the lack of work for her to perform arises from her frustration at not being permitted to work which does not rise to a compensable work factor.⁶ Beyond appellant's dislike of having been sent home on October 23, 2000, there is no evidence of record showing that the employing establishment erred or abused its authority in denying appellant limited-duty work on the basis that her compensable work-related injury from a prior claim had been terminated. This is further substantiated by the denial of appellant's grievance at step 2. Accordingly, there is insufficient evidence that sending appellant home on the basis that there was no light-duty work available within her restrictions was an unreasonable or erroneous administrative action.

Appellant's subsequent return to work and her reaction over the perceived embarrassment regarding the fact that her unit knew she had been sent home is self-generated and is not a compensable factor of employment. For harassment to give rise to compensability, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions and unsubstantiated allegations are not compensable.⁷

Moreover, the Office properly found that appellant's allegations regarding comments made by her coworkers on November 20, 2000 were not established as factual by the weight of the evidence of record. The Office reviewed appellant's specific allegations and found that it did not accept as factual that such statements were made, as alleged. The Office found that appellant did not provide any specific details surrounding such statements and failed to submit sufficient evidence to substantiate her allegations.

Accordingly, a reaction to such factors does not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of employing establishment error or abuse such personnel matters were not compensable factors of employment.

³ *Alfred Arts*, 45 ECAB 530 (1994).

⁴ *See Ronald Martinez*, 49 ECAB 326 (1998).

⁵ *See Helen P. Allen*, 47 ECAB 141 (1995).

⁶ *See Peggy R. Lee*, 46 ECAB 527 (1995).

⁷ *See Donna J. DiBernardo*, 47 ECAB 700 (1996).

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁹

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence. The Board notes that the evidence appellant submitted in her reconsideration request, although new, is not pertinent to the issue on appeal. Dr. A. James Giannini's report of October 20, 2001, although new evidence, is not relevant or pertinent because the Office has found that appellant failed to establish fact of injury. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits.

⁸ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

⁹ *Howard A. Williams*, 45 ECAB 853 (1994).

The decisions of the Office of Workers' Compensation Programs dated February 19, 2002 and May 15, 2001 are affirmed.

Dated, Washington, DC
October 3, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member