U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA K. HOBBS and U.S. POSTAL SERVICE,
BIRDSBORO POST OFFICE, Birdsboro, PA

Docket No. 01-1435; Submitted on the Record;
Issued September 24, 2002

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On October 28, 1998 appellant, then a 47-year-old rural letter carrier, filed a claim for anxiety and stress. Appellant noted that she became a full-time employee in April 1990 after working as a part-time rural relief carrier. In 1995 her substitute carrier was promoted to full time status and a new substitute carrier was hired who also worked as a school bus driver. The substitute worked Saturdays for appellant but frequently declined to work on days appellant wanted off. Appellant spoke to the postmaster, Larry Klick, about the situation and alleged that Mr. Klick responded by yelling at her. Appellant noted that she had to work two Saturdays because her substitute went to a bridal shower and a wedding.

Appellant alleged that Mr. Klick ran the employing establishment by intimidation. She stated that she was forced to work until 4:00 p.m. on Christmas Eve even though city carriers had left by 2:00 p.m. On one occasion, appellant used sick leave when her husband was sick and then called in sick the next day because she had a fever of 102.5 degrees. Appellant stated that Mr. Klick called her at home and screamed at her.

Appellant was approved leave for August 2, 1996, but had to work that date as her substitute was involved in an accident. In July 1997, after she spent a week training a new substitute and worked only 17 hours, Mr. Klick allegedly told her that she would not be paid her evaluated time. She filed a grievance and was paid.

On January 1, 1998 appellant asked that her postal route be adjusted and indicated that a route adjustment normally took 30 days to be accomplished. After 90 days, with no action on her request, she consulted a union steward who wrote to Mr. Klick. Appellant alleged that she was called into his office and reprimanded. She stated that the route adjustment was made on May 9, 1998. Appellant alleged that she worked on a route that had been evaluated at 61.49 hours a week or 10.2 hours a day, but was only paid for 48 hours a week. Appellant reported

that she was exhausted and frustrated as she had to work hard and fast to keep the route cleaned up.

In June 1998 appellant was invited to go on a family trip for three days, however, when she requested time off, Mr. Klick stated that he needed appellant's substitute to deliver an auxiliary route for those three days. Appellant asked her substitute and another substitute to split her route and the auxiliary route between them. They allegedly agreed, but when appellant asked Mr. Klick's permission she was told the substitutes could not work two routes in one day.

On August 19, 1998 appellant walked across the work floor to get her last tray of mail when Mr. Klick said in a loud voice that the "unknowns" had not yet been sorted. Appellant stated that his comment made it sound that she was leaving without all her mail. Shortly thereafter, a supervisor advised appellant that starting the following week, Mr. Klick wanted her to start work at 8:30 a.m. Appellant stated that she finished her route and began crying. She did not return to work after that date.

Appellant alleged that Mr. Klick would say "move" instead of "excuse me" and invaded her personal space. She stated that management repeatedly denied her leave requests, even if a substitute was not assigned to work; that leave slips were not returned in a timely manner and that she was falsely accused of being absent without leave on three occasions. Appellant alleged that Mr. Klick falsely claimed that she would often leave on her route without the "unknown" mail. She alleged that he tried to embarrass or humiliate her in front of others and yelled at her. She stated that Mr. Klick showed no concern for her safety and recounted an incident on March 24, 1994 when she had an accident on the way to work. Appellant reported the accident to Mr. Klick when she arrived at work while he was casing mail. Appellant stated that Mr. Klick paused, looked at her and then returned to casing mail without inquiring about her condition or whether she needed to see a physician.

In a September 15, 1998 letter, Joey Johnson described a meeting with Mr. Klick, appellant and other officials pertaining to appellant's start time at work. Mr. Johnson stated that Mr. Klick appeared agitated and glared at appellant.

In a November 11, 1998 statement, Mr. Klick responded to appellant's allegations. He hired a substitute for appellant's route who was a school bus driver because she was the only candidate available and the route had been without a substitute for a lengthy period. Mr. Klick noted that appellant claimed 31 days of requested leave were denied, but stated that 21 leave days cited by her were granted. The remaining 10 days were denied due to a lack of coverage. He stated that over 2½ years, appellant had 118 days of approved leave. Mr. Klick denied discriminating against her leave requests; asking her to work late on Christmas Eve and noted that her time cards for Christmas Eve showed that the latest she ever worked on that day was 2:25 p.m. He did not recall her allegation that he called her at home and screamed at her for taking sick leave. Mr. Klick commented that he had no reason to call her at home. Mr. Klick stated that appellant had to work on August 22, 1996 to cover her route during prime leave season when coverage on the rural routes was at a bare minimum. He advised appellant that she would be paid for actual hours worked and not her evaluated hours, which was in conformance with postal standards.

After appellant requested a route adjustment in December 1997, Mr. Klick was instructed to adjust routes beginning in January 1998 due to the heavy workload. He stated that he was instructed to adjust the routes as soon as possible, but no time limits were given and that it took several attempts to make all routes equal. Mr. Klick stated that the final paperwork was submitted on April 9, 1998 with an effective dated of May 9, 1998. Appellant's route, prior to the adjustment, was evaluated at 9.6 hours a day; from August 30, 1997 to January 3, 1998, appellant worked an average of 7.95 hours a day; from January 4 to May 8, 1998, an average of 6.69 hours a day; and from May 9 to August 29, 1998, an average of 5.16 hours a day. In 32 months, she worked over her evaluated time only on 13 occasions. With regard to appellant's request for leave in June 1998, he had approached his supervisor and was informed that there were no substitutes available for appellant. His supervisor stated, when appellant suggested that two substitutes split her route, that an employee could not be paid for working two routes on the same day. Mr. Klick indicated that, when a substitute did work two routes on the Saturday in question, he was not working that day, was unaware of the route assignment and would not have made the assignment.

On August 19, 1998 Mr. Klick informed appellant that her starting time was being changed by one hour as he was directed to have all first class mail delivered on the day it was received. To do so, all carriers were instructed not to leave until throwback mail was sorted. Mr. Klick stated that the change of appellant's time was necessary so she would not have to wait unnecessarily for the throwback mail. He described appellant as a fast and deliberate worker but had a tendency to pull down her mail for her route before the throwback mail was sorted, causing a need to locate her before she left on her route. Appellant was the only carrier consistently pulling down her case before the throwback mail was started or down.

Mr. Klick recalled that the winter of 1994 was extreme but he had no recollection of appellant approaching him on March 24, 1994 to describe her accident. He stated that appellant had trouble keeping substitutes on her route, as she often took off Mondays and the Tuesday after Monday holidays. He stated that the substitute carriers would, therefore, be required to work longer hours.

In an April 7, 1999 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that evidence of record failed to establish an injury in the performance of duty.

In an April 5, 2000 letter, appellant's attorney requested reconsideration and submitted statements from Bobbie J. Kerper and Suzanne Ayers, coworkers of appellant. They related on their interactions with Mr. Klick and noted that he did not exhibit respect for his employees, indicating generally that Mr. Klick yelled and glared at employees and would make humiliating remarks.

In a March 25, 2000 statement, appellant stated that when Mr. Klick hired a new substitute for her route, she still had an assigned substitute. He informed her that she had to give at least two days notice before taking off. Appellant asked that if the employing establishment could find coverage for 21 of the 31 days of leave she requested, then why was her request for leave denied. Appellant commented that as she never abused sick leave and reiterated that Mr. Klick screamed at her after calling her when she was on sick leave. In regard to training a

new substitute, she had requested additional training time because the substitute had a learning disability and had difficulty mastering the route. Appellant claimed he did not say anything about paying her regular pay while she was conducting the additional training and appellant was eventually paid after she filed a grievance. Appellant again discussed the incident relating to her request to cut her mail route. She stated that before the mail was cut, her route was rated at 61.49 hours even though she was being paid for 48 hours a week. Appellant stated that when she requested the time off in June 1998, Mr. Klick stated that he wanted appellant's substitute to deliver another route for an employee out on extended sick leave. Appellant contended that his action violated the union contract. In regard to changing her starting time, appellant contended that there was no operational need to change her hours and the changing of the hours was an example of harassment.

In a July 7, 2000 decision, the Office modified the April 7, 1999 decision, to reflect that the evidence established that Mr. Klick had yelled at appellant in front of other employees. The Office found, however, that the evidence did not establish error or abuse in the personnel and administrative matters alleged. It was also found that the medical evidence submitted did not provide a rationalized medical opinion explaining how appellant's emotional condition was causally related to the compensable employment factor.

In a November 7, 2000 letter, appellant's attorney requested reconsideration and submitted additional evidence. In a December 5, 2000 letter, Mike W. Melton, the employing establishment injury compensation specialist, noted that Mr. Klick denied yelling at appellant and that the evidence on this aspect was insufficient to establish a compensable work factor.

In a February 7, 2001 decision, the Office modified the July 7, 2000 decision to find that the evidence did not support that Mr. Klick yelled at appellant in front of other employees. The Office found that appellant's statement and the witness statements did not contain sufficient details of the alleged verbal exchanges between appellant and Mr. Klick.

The Board finds that appellant has not established that her emotional condition arose 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

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

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]

The Board has held that generally, an employee's emotional reaction to an administrative or personnel matter is not compensable. But error or abuse by employing establishment in what would otherwise be an administrative of personnel matter, or evidence that the employing agency acted unreasonably in the administration of a personnel matter may afford coverage.[4] Appellant has alleged error and abuse on the part of Mr. Klick in denying her leave requests, specifically as to requested days off; having to work later on Christmas Eve than other employees; leave slips not being timely returned; the denial of splitting her route amount to substitute carriers to facilitate a family vacation; delay in adjusting her postal route; and her pay rate while training. The Board finds that appellant has not submitted sufficient evidence to establish that Mr. Klick erred or acted abusively in the manner, in which he reviewed and handled appellant's leave requests, her work on Christmas Eve until 2:35 p.m., or in the postal route adjustment. Generally, the manner in which a supervisor exercises his or her discretion falls outside coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employees will, at times, dislike the actions taken or decisions made. Mere disagreement or dislike of a supervisory or management action will not be compensable absent error or abuse.[5] The evidence submitted on these allegations is insufficient to establish that Mr. Klick acted unreasonably. While appellant filed a grievance pertaining to her pay rate while training, the evidence of record does not substantiate error or abuse in the settlement of that matter.[6]

With regard to appellant's allegations of harassment and verbal abuse, for harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did in fact occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[7] Appellant alleged that her emotional condition and stress also arose from harassment by Mr. Klick, alleging that he called her at home and screamed at her while she was home on sick leave, that he said in a loud voice that the "unknowns" had not been sorted, changing her hours at work and, following an accident, he did not exhibit concern for her health or safety. To discharge her burden of proof, appellant must establish a factual basis for her claim

[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] *See Norman A Harris*, 42 ECAB 923 (1991).

[5] *See Frank B. Gwozdz*, 50 ECAB 434 (1999).

[6] *See Constance I. Galbreath*, 49 ECAB 401 (1998).

[7] *Bonnie Goodman*, 50 ECAB 139 (1998).

by supporting her allegations of harassment with probative and reliable evidence.[8] The evidence submitted by appellant, consisting primarily of statements by several coworkers, is not sufficient to support her allegations. The statements submitted, as found by the Office, indicate that Mr. Klick made nasty comments, humiliating remarks and glared at appellant. These statements, however, are not sufficiently detailed as to any remarks allegedly made by Mr. Klick directed at appellant or describe the time, place or parties involved. As such, this evidence is not sufficiently probative to sustain appellant's burden of proof in support of her allegations. The Board finds that appellant has not established a compensable factor of employment in this case.

The decisions of the Office of Workers' Compensation Programs, dated February 7, 2001 and July 7, 2000, are hereby affirmed.

Dated, Washington, DC
September 24, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] *Ruthie M. Evans*, 41 ECAB 416 (1990).