

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RHODA KOPEL and U.S. POSTAL SERVICE,
POST OFFICE, Islandia, NY

*Docket No. 02-519; Submitted on the Record;
Issued September 19, 2002*

DECISION and ORDER

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

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

On December 8, 2000 appellant, then a 47-year-old retail manager, filed a notice of occupational disease alleging that on September 25, 2000 she developed anxiety and a panic disorder due to retaliatory action at the employing establishment and an investigation by the Postal Inspection Service.

Appellant alleged that she was previously employed as a retail manager and she became aware of an investigation of one of her subordinates, Jerry Neftleberg, by the Inspector General's (IG) Office, regarding stolen merchandise during a project called Lightpath. She stated that, Mr. Neftleberg accused her of reporting him to the IG in an altercation regarding other stolen property. Appellant was directed by her immediate supervisor, Dennis Guerin, to write up a disciplinary letter describing her interactions with Mr. Neftleberg. After completion of the investigation, she was informed by Mr. Guerin that she was also to be investigated by the IG for supervisor misconduct.

Appellant alleged her emotional condition to the following incidents:

- (1) August 23, 2000 appellant alleged that she was improperly interrogated by Inspector Nater, as he suggested that she was inclined to favor the men working under her over the women. She was questioned about her marriage as well as any problems she was having with the age of her employees;
- (2) August 25, 2000 appellant was reassigned to the Business Center with duties including invitation lists, computer inputs, organizing company slogans;

- (3) September 12, 2000 Mr. Guerin, appellant's immediate supervisor, told her that the investigation was completed, although she believed that some employees were overlooked in the investigation;
- (4) September 12, 2000 Marlene Butler passed appellant's car twice in the parking lot;
- (5) September 15, 2000 Mr. Guerin told appellant that the inspector would interview the additional employees;
- (6) September 18, 2000 Mr. Neftelberg, a retired employee showed up for a meeting with Mr. Guerin and Mr. Rosati;
- (7) September 20, 2000 appellant was informed that her nameplate had been removed from her office;
- (8) September 21, 2000 appellant contacted her NAPS representative about the removal of her nameplate;
- (9) September 22, 2001 appellant was told that she was being removed from her position as retail manager but that she would be able to maintain her level at another location so long as she admitted to mismanagement. She alleged that she was told that if she did not admit to wrongdoing she would be subject to "hard discipline" in the form of a demotion;
- (10) From September 25 to November 21, 2000 appellant was assigned to the Business Center and subsequently the district personnel office with little or no actual work duties;
- (11) September 28, 2000 the lock to appellant's office door was changed and she was not issued a key;
- (12) October 3, 2000 Andrew Moresco told appellant that he would send her for training to hone her "interpersonal skills" so long as she underwent counseling;
- (13) October 5, 2000 Mr. Moresco asked appellant to sign an agreement for retraining and counseling;
- (14) October 10, 2000 Mr. Guerin gave appellant a leave slip marked for family/medical leave;
- (15) October 11, 2000 Mike Curry, the union representative inquired whether appellant would sign the agreement;
- (16) October 12, 2000 the IG's Office responded to appellant's inquiry regarding allegations of retaliatory action;

(17) October 13, 2000 appellant was presented with a modified agreement by Mr. Guerin and Mr. Moresco;

(18) October 17, 2000 appellant cancelled her appointment with the EAP counselor out of concern for her privacy;

(19) November 6, 2000 appellant asked Mr. Moresco about the proposed retraining, to which he replied "when I know I'll let you know"

(20) November 8, 2000 Ms. Butler, a former employee of appellant had a dispute with her replacement;

(21) A PS form 991 submitted by Mike Curry was left on appellant's car windshield;

(22) October 2, 2000 appellant alleged that she was not allowed to remove personal items from her office.

In a letter dated February 22, 2001, the Office advised appellant of the factual and medical evidence required to establish her claim for compensation.

The employing establishment submitted a report dated August 18, 2000 prepared by Mr. Guerin indicating that appellant was accused of creating a hostile work environment. In an October 19, 2000 memorandum, Mr. Guerin wrote to appellant concerning EAP counseling. He stated: "[I]f you require counseling to be able to resume the duties of your position or just to improve your health, then I sincerely hope that you continue with your sessions. Whether you attend counseling is your own choice. However, upon completion of the training, I will still rely on the input of the Employee Workplace Intervention Analyst before returning you to your position."

There is also a September 7, 2000 investigative memorandum by Postal Inspector, F.R. Nater, which stated: "[I]nvestigation disclosed an abusive, offensive, disparate and confrontational environment which, is being perceived by your employees as consistent and patterned."

The record contains statements by Ms. Butler, Kat Lantier, Margaret Brady and Alex Blandeburgo, who filed complaints against appellant prompting the IG investigation. They alleged that appellant attributed an improper demeanor in carrying out her supervisory duties and that she used inappropriate language. The female employees contended that appellant favored the male employees in the assignment of work duties.

In a January 22, 2001 memorandum, Mr. Moresco denied that appellant's nameplate had been removed from her office.

In a March 30, 2001 memorandum, Terry Della, a manager of Personnel Services, stated that appellant had been reassigned on account of medication she had been prescribed for an emotional condition and concern that the medication precluded her from performing the required job duties.

In a decision dated October 12, 2001, the Office denied compensation on the grounds that appellant failed to establish an emotional condition in the performance of duty.

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

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.¹ 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 employee'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 employee, 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 the employee.²

Workers' compensation law is not applicable 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 workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.⁵ However the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing with the

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁵ See *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

claimant.⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act, absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor in general must be allowed to perform his or her duty and that, in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisor's management style or actions taken by the supervisor will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.⁸

In this case, appellant alleges that she developed anxiety and panic disorder as a result of an IG investigation that was undertaken of her for allegedly creating a hostile work environment. The record reveals that appellant was in a supervisory position and several of her subordinate employees accused her of sexual discrimination, improper demeanor and improper language in the workplace. The result of the investigation disclosed that appellant had shown preferential treatment to male employees and she was removed from her position in order to get management training to teach her how to correctly supervise.

Appellant's general allegations as to the propriety of the investigation against her and that she was improperly interrogated by Inspector Nater are not compensable. An investigation into allegations of employee misconduct is an administrative function of the employer.⁹ Absent evidence of error or abuse of discretion of the employer, an emotional reaction to an administrative action is considered self-generated and is not compensable. There is no evidence of error or abuse in the employer investigating appellant for complaints of creating a hostile work environment.

There is no factual support for appellant's allegation that the inspection service was biased or that the district manager manipulated witnesses' statements. The inspector's memorandum of September 7, 2000 stated that the "investigation disclosed an abusive, offensive, disparate and confrontational environment which was perceived by [appellant's subordinates] as consistent and patterned." Appellant has submitted insufficient evidence to establish that investigation was biased, such as her own witness statements, grievance or Equal Employment Opportunity findings to support her claim that she was investigated for improper reasons or that such investigation was carried out in an inappropriate manner. The Board,

⁶ See *Elizabeth Pinero*, 46 ECAB 123 (1994).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *Constance I. Galbreath*, 49 ECAB 401 (1998).

⁹ See *Patricia A. English*, 49 ECAB 113 (1997). (Investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially-assigned employment duties are not considered to be employment factors).

therefore, finds no evidence of error or abuse by the employing establishment in conducting the investigation and appellant's feelings in reaction to it were self-generated.¹⁰

Appellant also attributed her emotional condition to having been reassigned to the business and personnel office where she had little to no responsibility. The assignment of work, however, is an administrative function of the employing establishment and not a duty of the employee.¹¹ The Board finds no evidence of error or abuse by the actions of the employing establishment in reassigning appellant, given that she was required to undergo supervisory training because of misbehavior on her own part. Moreover, it appears that appellant was assigned relatively few work duties during a time when she was medicated and admittedly unable to function at her normal work level. Thus, the reassignment is not compensable.

The Board considers that the employing establishment acted reasonably in offering appellant the choice of admitting to wrongdoing and undergoing additional supervisory training or else being demoted. Appellant has not shown that the disciplinary measures undertaken by the employing establishment were abusive or unreasonable under the circumstances, given that appellant was found to have created a hostile work environment.¹²

Although appellant considered it improper for Mr. Guerin to give her a leave slip for Family Medical Leave (FMLA), her emotional reaction to this administrative matter is self-generated. There is no evidence of record to establish that appellant was required to take FMLA leave or that she was incorrectly encouraged to do so.

Similarly, although appellant discontinued her EAP counseling out of concern for her privacy, there is no factual support in the record to indicate that her privacy was in jeopardy or that she was forced to undergo such counseling. Memorandum from the employing establishment show that appellant was given the option of EAP counseling to cope with personnel and professional issues. In the absence of error or abuse by the employing establishment in offering appellant EAP counseling, this was an administrative function and is not compensable.

Finally appellant's perception that Ms. Butler passed her car twice on September 12, 2000 in a deliberate attempt to intimidate her is not compensable as the allegation has no factual support in the record.¹³ Appellant did not submit any witness statements to the event. Mere perceptions of harassment are not compensable factors of employment.

¹⁰ There is no factual support for appellant's allegation that her nameplate was removed from her office before the results of the IG investigation had been determined.

¹¹ *Janet D. Yates*, 49 ECAB 240 (1997).

¹² See generally *Bernard Snowden*, 49 ECAB 144 (1997) (the employer has the right to conduct investigations if wrongdoing is suspected and carry out disciplinary matters so long as there is no evidence of error or abuse).

¹³ Appellant's concern over whether or not Ms. Butler agreed with the management style does not concern her specific or regular assigned duties and is not compensable.

The decision of the Office of Workers' Compensation Programs dated October 12, 2001 is hereby affirmed.

Dated, Washington, DC
September 19, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member