U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OLLIE CONLEY and U.S. POSTAL SERVICE,
SOUTH CENTRAL ADMINISTRATION BUILDING,
Los Angeles, CA

Docket No. 02-548; Submitted on the Record;
Issued September 12, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty; and, (2) whether the Office of Workers' Compensation Programs properly found that appellant abandoned her request for a hearing.

On June 23, 2000 appellant, then a 53-year-old unit coordinator and senior distribution clerk, filed a claim for "physical and mental stress" which she attributed to overwork. Appellant asserted that she was the acting supervisor for her unit from March 16, 1998 to March 2000, as she took over the duties of unit manager Gerry Staggs, who was transferred to another station. Additionally, in October 1999, appellant took over "seeder" duties and training of new personnel when an employee became ill and retired. At the same time, she was also responsible for compiling and issuing reports to six management sectors. Appellant recalled feeling unappreciated, undervalued and underpaid. She was refused overtime from November 1999 onward, but was provided assistance in March 2000. In February 2000, appellant's unit was written up for safety violations, which were not repaired until June 9, 2000. In March 2000, appellant sustained an occupational lumbar strain when she lifted heavy boxes of records onto a shelf, an unsafe storage practice that was written up as a safety violation.[1] She was then assigned to the overnight shift (Tour I) effective 9:15 p.m. June 9, 2000. Appellant alleged that unit manager Irma Jenkins did not notify her of this tour change on June 2, 2000, but waited for her to receive written notification by mail on June 5, 2000. Appellant stated that this was undue "stress that could have been communicated better." She also asserted that she was assigned from June 5 to 9, 2000 to train manager Roy Valdez, as well as performing her own duties on Tour II. Appellant was thus required to work two tours on June 9, 2000. She also recalled a 1993 incident in which a supervisor reprimanded her in front of coworkers at a training seminar. Appellant stopped work on June 9, 2000.

[1] Claim No. 13-12214986.

Appellant submitted medical evidence in support of her claim.[2]

In a June 22, 1993 report, Dr. Ibrahim Faird, an employing establishment physician, recommended permanent light duty due to a nonoccupational degenerative condition of the left shoulder, aggravated by carrying a mail satchel in 1988.

In a July 11, 2000 report, Dr. Winnie M. Allen, attending clinical psychologist, stated that "to maintain therapeutic gains [appellant] would benefit from working days. She will be seen in follow-up individual treatment [after] she returns to work July 24, 2000."

In a July 12, 2000 report, Dr. Lawrence Levy, an attending clinical psychologist, released appellant to return to work on August 8, 2000. In an August 7, 2000 note, Dr, Levy released appellant to return to work on August 9, 2000 "on day shift only (unable to work nights)."

In an August 11, 2000 report, Dr. Denise Horn, an attending physician, noted appellant's account of receiving a June 5, 2000 notice regarding her return to Tour I on June 9, 2000, having to train a hispanic supervisor the previous week and that appellant was the only employee assigned to Tour I on June 5, 2000. Dr. Horn prescribed medication.

In a July 27, 2000 letter, Irma Jenkins, appellant's supervisor, controverted appellant's account of events. Ms. Jenkins stated that "staffing was more than sufficient" and the "workload equalized to accommodate each employee's limitations." Ms. Jenkins noted that there "were no extra demands required of [appellant] … she performed the duties assigned to her without any problems."

In an attached July 26, 2000 statement, Ms. Jenkins denied that appellant was overworked, underpaid or harassed. She noted that appellant was classified as a "permanent light[-]duty" worker. Ms. Jenkins explained that due to appellant's "limitations, she was assigned to do data input and generate reports to be disbursed to the direct reports. [Ms. Jenkins] did not assign any other duties to [appellant]." She stated that she never requested that appellant take over an ill coworker's duties in October 1999 as another employee "had already been requested to assume the retired person's duties." In November 1999, when appellant requested a pay increase, Ms. Jenkins informed her that the unit was not funded for such a position. Ms. Jenkins noted that while other rehabilitation employees had been granted overtime, they were assigned and budgeted under a different classification that allowed overtime pay. Regarding appellant's allegations "that she was overworked, unappreciated and underpaid," Ms. Jenkins asserted that she "never disresepcted [appellant]" and tried to accommodate her requests. Ms. Jenkins noted that appellant received "nonmonetary" recognition for her work on several occasions and did not mention her feelings of being overworked to Ms. Jenkins prior to filing her claim. Regarding the March 2000 lumbar injury, Ms. Jenkins stated that she did "not instruct [appellant] to perform any job outside of her limitations…." Regarding appellant's assignment to Tour I, Ms. Jenkins recalled inquiring on June 2, 2000 when the rehabilitation employees, including appellant, would be returned to their assigned tours. Ms. Jenkins was

[2] In a July 20, 2000 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. The Office noted that appellant's claim form and statement, position description and the medical evidence submitted, were insufficient to establish her claim.

informed that the letters were being prepared, but was not given a date when each employee would receive a notice. Appellant came to Ms. Jenkins' office "the next morning, to inform her that she received her letter … this was the first knowledge [Ms. Jenkins] had in regard to the letters being sent out." Ms. Jenkins noted that she did "not assign [appellant] to Tour I; this was her bid position and she was being returned to her official assignment." Regarding appellant's assertion that she was required to train Mr. Valdez while performing her own duties, Ms. Jenkins stated that she assigned Mr. Valdez to appellant's unit on June 5, 2000 due to "changes and reduction in staff," so that he could "observe the operation and provide feedback for condensing … redundant reports and paperwork." Ms. Jenkins emphasized that she "did not ask [appellant] to train anyone, because Operation Programs was in the process of restructuring the entire unit."

In an August 1, 2000 letter, appellant noted that attending college classes at night to finish a management degree while working days, was making her assignment to Tour I especially difficult. She noted hobbies of gardening, walking and meditation. Appellant noted that she was denied overtime and a pay increase for performing supervisory work. She noted receiving counseling in 1983 pursuant to a left neck, knee, shoulder and breast injury attributable to carrying a mail satchel. Appellant alleged that the employing establishment demoted her from a carrier to a clerk and assigned her to the "graveyard shift" in retaliation for her filing a 1983 injury claim and a 1987 recurrence claim. She also alleged unspecified sexual harassment.

By decision dated February 23, 2001, the Office denied appellant's emotional condition claim on the grounds that she had failed to establish any compensable factors of employment.[3] The Office found that appellant did not submit corroborating evidence establishing that she was reprimanded by a supervisor at a 1993 training session. The Office also found that appellant's allegations of being overworked, underpaid and unappreciated in December 1999, as well as her general allegations of overwork, were unsubstantiated, self-generated perceptions.

The Office accepted as factual that in March 1998, appellant was assigned exclusively to prepare and generate reports, that her duties were changed in October 1999 when a coworker retired, that she was denied overtime and was reassigned to Tour I effective June 5, 2000. However, the Office found that appellant's reaction to these administrative actions were self-generated frustration over not being able to work in a particular environment and were therefore, not compensable. The Office also accepted the February 2000 safety violations, but found that these were not compensable employment factors as she was not assigned to monitor safety issues. The Office noted that any reactions to the March 2000 lumbar injury should be pursued under that claim. The Office found that appellant had not established that she was assigned to train Mr. Valdez from June 5 to 9, 2000, as Ms. Jenkins stated that she was not so assigned. The Office also found that appellant had not established her allegations of overwork.

In a letter dated and postmarked March 23, 2001, appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review. She submitted the medical record from March 1993 through November 18, 2000 which she asserted established a causal relationship between work factors and the claimed emotional condition.

[3] The Office noted that although appellant had filed an Equal Employment Opportunity (EEO) complaint, there were no dispositive findings of record.

In an April 19, 2001 letter, the Office's Branch of Hearings and Review advised appellant of the rules and regulations governing oral hearings, including that under 20 C.F.R. § 10.622(b), a hearing may not be postponed unless a written request is made within 10 days after the scheduled hearing, documenting either that the claimant was hospitalized involuntarily or a death in the claimant's immediate family. The Office noted that "[w]here a postponement is denied for the reason that no exceptional circumstances … exist or that the hearing could not be scheduled on the same docket, no further opportunity for oral hearing will be provided.… If the claimant fails to appear for the hearing or within 10 days of the scheduled hearing to provide documentation of such failure to attend, the hearing request will be deemed abandoned."

In a September 20, 2001 notice addressed to appellant at her address of record, the Office advised appellant that a hearing was scheduled in her case at 10:00 a.m. on October 24, 2001 at an office building in Los Angeles.

The record indicates that appellant did not appear at the October 24, 2001 hearing. The record does not contain any communication from appellant either before or after the scheduled hearing regarding her failure to appear.

By decision dated November 15, 2001, the Office found that appellant had abandoned her request for an oral hearing. The Office found that appellant was provided with proper written notice 30 days prior to the scheduled October 24, 2001 hearing, failed to appear and did not contact the Office "either prior or subsequent to the scheduled hearing to explain [her] failure to appear."

On appeal, in a December 12, 2001 letter, appellant stated that she did not attend the October 24, 2001 hearing due to "illness and constant pain. She acknowledged that she "received written notification of the hearing 30 days in advance of the hearing and [she] failed to appear. Further, [appellant] did not contact [the] Office either prior or subsequent to the scheduled hearing to explain [her] failure to appear."

Regarding the first issue, the Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the scope of coverage of the Federal Employees' Compensation Act.[4] When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship.[5] To establish entitlement to benefits, a claimant

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

[5] *See Barbara Bush*, 38 ECAB 710 (1987).

must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[6]

Several of appellant's allegations are too general to be substantiated. She alleged that a supervisor reprimanded her in 1993 at a training session and that she was sexually harassed on an unspecified occasion or occasions. Appellant could not recall the dates of the alleged incidents, the name or names of the persons involved, the content of the conversations and did not provide any witness statement corroborating her account of events. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.[7] Thus, appellant has failed to establish these allegations as factual.

Similarly, appellant alleged that she was overworked, but did not provide corroborating evidence. In particular, she alleged that she was overworked from June 5 to 9, 2000 as she was assigned to train Mr. Valdez in addition to performing her own duties. However, in her July 26, 2000 statement, Ms. Jenkins, appellant's supervisor, stated that she did not assign appellant to train anyone. Appellant has thus failed to establish her allegations of overwork.

Appellant also attributed her condition to feeling disrespected, underappreciated and underpaid. However, Ms. Jenkins pointed out that appellant had received several employee recognitions or awards for her work, asserted that she "never disresepcted [appellant]" and tried to accommodate her requests. Ms. Jenkins' account of events generally refutes appellant's allegations. Thus, appellant has failed to establish a compensable employment factor as a basis for her feelings.

Appellant also alleged that she was denied promotions, pay increases and overtime. Although the assignment and the monitoring of activities at work, such as assigning work shifts and pay schedules, are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[8] Administrative actions are not considered compensable employment factors in the absence of error or abuse.[9] In this case, appellant has not submitted any evidence indicating that the employing establishment erred in denying appellant overtime, promotions or pay increases. Thus, she has failed to establish a compensable work factor in respect to these administrative matters.

Appellant attributed her emotional condition in part to receiving a June 5, 2000 letter informing her of her reassignment to Tour I, although she preferred that Ms. Jenkins would have informed her personally. However, an employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which supervisors exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that employees will

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

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

[8] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[9] *James H. Botts*, 50 ECAB 265 (1999).

at times dislike actions taken. For example, the Board has held that discussions of job performance do not fall under coverage of the Act absent a showing of error or abuse.[10] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11] To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.[12] In this case, appellant submitted no evidence indicating that being informed by letter of her return to her assigned, bidded position constituted error or abuse. She has thus, failed to establish a compensable factor of employment in this respect.

Appellant also attributed her emotional condition, in part, to the employing establishment failing to correct safety violations noted in February 2000 until June 9, 2000. Ms. Jenkins noted that appellant was not required to monitor safety conditions. Therefore, the safety violations appear to be outside the scope of appellant's job duties. Also, appellant's dissatisfaction with management's handling of the safety violations is a self-generated reaction not within the performance of duty.[13]

Appellant has thus, failed to establish that she sustained an emotional condition in the performance of duty, as she failed to establish any compensable factor of employment.[14]

Regarding the second issue, the Board finds that the Office properly found that appellant abandoned her request for an oral hearing.

In a decision dated November 15, 2001, the Office found that appellant abandoned her March 23, 2001 request for an oral hearing before an Office hearing representative. The Office noted that the hearing was scheduled for October 24, 2001, that appellant received written notification of the hearing 30 days in advance, that appellant failed to appear and that the record contained no evidence that appellant contacted the Office to explain her failure to appear.

Section 10.137 of Title 20 of the Code of Federal Regulations, revised April 1, 1997 previously set forth the criteria for abandonment:

> "A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in assessment of costs against such claimant.

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[10] *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

[11] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[12] *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

[13] *Ray E. Shotwell*, Jr., 51 ECAB ___ (Docket No. 99-2032, issued September 12, 2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[14] As appellant failed to establish any compensable factor of employment, the medical evidence need not be addressed, as there are no compensable factors to which to attribute any diagnosed condition. *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

> "A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for hearing that another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.[15]

These regulations, however, were again revised April 1, 1999. Effective January 4, 1999 the regulations now make no provision for abandonment. Section 10.622(b) addresses requests for postponement and provides for a review of the written record when the request to postpone does not meet certain conditions.[16] Alternatively, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative. The section is silent on the issue of abandonment.

The legal authority governing abandonment of hearings now rests with the Office's procedure manual. Chapter 2.1601.6.e of the procedure manual, dated January 1999, provides as follows:

> "e. Abandonment of Hearing Requests.
>
> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present:
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> > [T]he claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. "Under these circumstances, H & R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [District Office]. In cases involving prerecoupment hearings, H & R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.
>
> "(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H & R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.
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> "(3) This course of action is correct even if H & R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."[17]

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[15] 20 C.F.R. §§ 10.137(a), 10.137(c) (*rev.* April 1, 1997).

[16] 20 C.F.R. § 10.622(b) (1999).

[17] Federal (FECA) Procedure Manual, Part 2 -- *Claims*, Hearings and Reviews of the Written Record, Chapter 2.1601.6.e (January 1999).

In this case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on October 24, 2001. On September 20, 2001 the Office mailed an appropriate notice to appellant at her last known address, setting forth the date, time and location of the scheduled oral hearing. The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. On appeal, in a December 12, 2001 letter, appellant admitted that she failed to appear at the scheduled hearing, did not request postponement and did not contact the Office within 10 days of the scheduled hearing to explain her failure to appear. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.

The decisions of the Office of Workers' Compensation Programs dated November 15 and February 23, 2001 are hereby affirmed.

Dated, Washington, DC
September 12, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member