

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBORAH B. JACKSON and U.S. POSTAL SERVICE,  
POST OFFICE, Omaha, NE

*Docket No. 03-417; Submitted on the Record;  
Issued April 15, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

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

On March 14, 2001 appellant, then a 37-year-old former letter carrier, filed an occupational disease claim for stress/anxiety/depression, which she became aware was work related on August 20, 1998. She contended that her emotional condition was brought on by her supervisors, which caused her to change and behave in an unbecoming way. Appellant stated that, after she injured her left shoulder on the job, she became a target of mental and physical abuse. She alleged retaliation after filing numerous Equal Employment Opportunity (EEO) complaints. Appellant advised that this stress took her through a series of emotional upsets that affected her employment and later resulted in her termination. On the reverse side of the claim form, her supervisor indicated that she was terminated due to a guilty conviction found in a theft trial. Appellant was reported as having last worked at the employing establishment on or about August 20, 1998. In support of her claim, she submitted a number of statements in which she stated that her employment-related conditions were the reasons for her EEO complaints and grievances, which were pending in civil court. The employing establishment also submitted a number of statements denying that appellant were neither a victim of a hostile work environment nor sexual harassment. Information pertaining to appellant's removal from the employing establishment was also submitted.

By decision dated October 19, 2001, the Office of Workers' Compensation Programs denied appellant's claim, finding that she failed to establish that she sustained an emotional condition in the performance of duty. On November 19, 2001 appellant requested a hearing that was held on May 29, 2002, at which time she testified regarding her claim and submitted additional evidence. She alleged that her supervisors conspired against her and worked her outside of her physical restrictions, which, in turn, caused her to abuse drugs and alcohol and neglect her children. Appellant indicated that management knew she had a problem with drugs and alcohol and did nothing to help her. She alleged that the postmaster lied at her arbitration

hearing after her conviction for shoplifting. By decision dated September 3, 2002, an Office hearing representative affirmed the prior decision.

The Board finds that appellant failed to establish that she sustained an emotional condition causally related to factors of her employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.<sup>3</sup> The issue is not whether the claimant has established harassment or discrimination under standards applied by the EEO Commission. Rather the issue is whether the claimant, under the Act, has submitted evidence sufficient to establish an injury arising in the performance of duty.<sup>4</sup> To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.<sup>5</sup>

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>6</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>7</sup>

Appellant alleged that she was the target of emotional and physical abuse and a victim of retaliation after filing numerous grievances and EEO complaints. She asserted that her employment-related conditions were the reason for her EEO complaints and grievances.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>3</sup> *Michael Ewanichak*, 48 ECAB 364, 66 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

<sup>4</sup> See *Martha L. Cook*, 47 ECAB 47 ECAB 226, 231 (1995).

<sup>5</sup> *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

<sup>6</sup> See *Norga*, *supra* note 2 at 481 (1995); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>7</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

The record reflects that appellant sustained a work-related shoulder injury on February 18, 1997 in which an arthroscopic procedure was performed. She alleged that she had to work beyond her work restrictions. The employing establishment noted that it complied with appellant's physical restrictions and none of the grievances or EEO complaints addressed this issue. The only specific incident appellant described was being assigned to use vice grips with one hand while another coworker, who could have used two hands, might have been assigned this task. However, her general allegation of harassment lacks specificity and appellant has not submitted sufficient evidence to support her allegation that the employing establishment treated her in an inappropriate manner or violated her physical restrictions based on her shoulder injury.

Appellant alleged that she first became aware of and realized that her emotional condition was causally related to factors of her federal employment on August 20, 1998. The Board notes that an EEO final interview of September 17, 1998 contains allegations of discrimination and retaliation during the period January 31 through June 27, 1998, which is most contemporaneous to the time frame alleged. The allegations concerned appellant's nonselection for two supervisor vacancies, harassment from supervisors and acting supervisors, being denied training and advancement and receiving unfair ratings. No final EEO decision is of record on these matter. The Board has considered the evidence of record and finds that appellant has submitted insufficient evidence to sustain her allegations.<sup>8</sup> Regarding her allegations that the employing establishment issued unfair performance evaluations<sup>9</sup> and refused to give training as requested,<sup>10</sup> the Board has held that these matters involve administrative or personnel matters which are not covered under the Act unless there is evidence showing error or abuse. Appellant has not provided evidence to establish a finding of error or abuse; therefore, she has not established a compensable employment factor under the Act with respect to these allegations. Regarding her allegation of denial of promotions, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.<sup>11</sup> Regarding appellant's allegation that her supervisors and acting supervisors engaged in actions which she believed constituted harassment and discrimination, she provided insufficient evidence, such as witness statements, to establish that the alleged incidents actually occurred.<sup>12</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Review of the evidence reveals that the employing establishment, in a letter dated October 23, 1998, informed appellant that she would be removed on November 28, 1998 based on conduct unbecoming of a postal employee. The letter noted that she had been found guilty of

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<sup>8</sup> *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

<sup>9</sup> *See Janet I. Jones*, 47 ECAB 345, 47 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

<sup>10</sup> *See Schroeder*, *supra* note 8.

<sup>11</sup> *Donna J. DiBernardo*, 47 ECAB 700, 03 (1996).

<sup>12</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

theft at a J.C. Penny's store on August 18, 1998. It advised that the employing establishment had a commitment to the public to maintain the sanctity of the mails and, due to her theft conviction, she was in violation of the standards of conduct. Appellant filed a grievance relative to her removal, which an arbitrator denied on September 13, 1999 on the basis that the employing establishment had just cause for the termination. Although appellant has alleged that her removal and subsequent efforts to pursue legal action against the employing establishment caused her stress, the Board finds that matters involving the discipline of employees, including termination of employment, relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>13</sup> However, in determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.<sup>14</sup> As the EEO decision of September 13, 1999 was unfavorable to appellant, there is no factual basis to appellant's allegation of error and, as such, her reaction is considered self-generated.

The Board further finds that appellant has failed to submit evidence substantiating her allegations that her supervisors were responsible for a stress-related condition or that her supervisors were in any way responsible for her "to change and behave in an unbecoming way" or that she "became the target of mental and physical abuse." There is also no evidence to support appellant's claim that she was "a victim who suffered from constant retaliation after filing numerous EEO complaints." The Board has considered the evidence of record and finds that appellant has submitted insufficient evidence to sustain her allegations of events.<sup>15</sup> The Board notes that unfounded perceptions of harassment do not constitute an employment factor and that mere perceptions are not compensable under the Act.<sup>16</sup> In the present case, appellant has not submitted sufficient evidence to support the alleged incidents of harassment. Accordingly, the Board finds that appellant has failed to substantiate her claims of harassment.

The Board finds that appellant's problems with drugs and alcohol and difficulties with her children are personal matters unrelated to her federal employment and, therefore, do not fall within the coverage of the Act.

Consequently, appellant has not established that she sustained an emotional condition in the performance of duty, as she failed to establish any compensable factor of employment.

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<sup>13</sup> See *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>14</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>15</sup> See *Schroeder*, *supra* note 8; *Mary N. Kolis*, 25 ECAB 53 (1973).

<sup>16</sup> *Kathleen D. Walker*, 42 ECAB 603 (1991).

The September 3, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 15, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member