

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESLIE J. BRADY and U.S. POSTAL SERVICE,
POST OFFICE, Albany, NY

*Docket No. 02-1863; Submitted on the Record;
Issued August 12, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On November 28, 2000 appellant, then a 51-year-old customer service supervisor, filed a claim alleging that she sustained depression and anxiety in the performance of duty on or before March 9, 2000. Appellant alleged that a supervisory staffing shortage forced her to take "short cuts." She expressed frustration at not being able to remain in the operations support or safety offices, where she had enjoyed her responsibilities. Appellant alleged that, in March 1999, she experienced severe stress when required to close daily operations at a post office with which she was unfamiliar. She also alleged that, in October 1999, she was warned of a conspiracy against her by employing establishment and union officials. During a December 28, 1999 meeting, Morris McCabe, her supervisor, accused appellant of favoritism toward her brother, Dale Mulhern, a letter carrier under her supervision who allegedly combined breaks and lunch periods without authorization, used excessive overtime and requested too much assistance. She asserted that, on December 30, 1999, Mr. McCabe gave her the option of a disciplinary transfer to another post office or a voluntary downgrade, which she accepted.¹ When appellant was notified on March 4, 2000 that she would be transferred, she developed acute anxiety and stopped work. Appellant returned to work on June 30, 2000 for intermittent periods on an open schedule. She alleged that she was given insufficient training and instructions to perform her assignments. Appellant concluded that management was trying to force her out by not giving her sufficient work. Appellant stopped work on October 23, 2000.²

¹ The record contains March 12, 2000 forms effecting appellant's downgrade from a Grade 20, Step 0 to a Grade 16, a reduction of \$9,627.00 in salary.

² Appellant submitted medical reports regarding treatment for depression and anxiety from March 2000 to April 2001.

The employing establishment submitted evidence controverting appellant's claim, refuting her assertions that it was permissible for Mr. Mulhern to have combined his breaks and lunches. In a January 13, 2000 notice, Mr. Mulhern was given a seven-day suspension for unauthorized overtime, combining of breaks and lunch periods, using an unauthorized lunch break site, and spending excessive time at his residence on various dates from December 8 to 28, 1999.³ In a February 5, 2001 letter, Anthony H. Hall, an employing establishment manager, stated that, during March 2000, he did not authorize Mr. Mulhern "to combine his breaks and lunches." In a February 8, 2001 letter, Greg French, postmaster of Albany, New York, affirmed Mr. Hall's statements.

By decision dated June 4, 2001, the Office denied appellant's claim for an emotional condition on the grounds that she had not established a compensable factor of employment in which to relate the claimed depression. The Office accepted as factual that, on December 28, 1999, Mr. McCabe questioned appellant regarding her oversight of Mr. Mulhern, accused her of favoritism, gave her the choice of accepting a downgrade in lieu of disciplinary action, transferred her to another post office in March 2000, and that she worked from June 30, 2000 onward with no fixed schedule. The Office found, however, that these matters constituted administrative actions of the employer that did not fall within the performance of appellant's duties, and that no error or abuse was established that would bring these matters under coverage of the Federal Employees' Compensation Act. The Office also found that appellant had not established as factual her allegations of an October 1999 conspiracy against her, or that she was shunned by her coworkers after accepting the downgrade in December 1999.

Appellant disagreed with this decision and in a December 27, 2001 letter requested reconsideration. She submitted additional evidence.

Appellant submitted a supervisor's duty roster for the Terminal Street Station, indicating that she was one of three supervisors on duty on March 11, 13, 15, 16 and 17, 1999. Appellant asserted that she was required to "close operations alone" on her first day on duty at the station, although she, the other two supervisors and a manager were also unfamiliar with its operations. This necessitated that appellant train the manager in closing the station's operations.

In a July 23, 2001 note, Chuck Cramer, a coworker of appellant's and a union steward, stated that, during a discussion on an unspecified date, between unspecified persons, "concerning Mr. Mulhern's lunch and break point," an "agreement was reached that [Mr. Mulhern] could take them at end of route. This agreement was with [Ms. Madonna] while she was acting station manager."

In a December 2001 letter, Mr. Mulhern stated that appellant was his station manager from 1995 through 1999. He noted that appellant did not treat him differently from the other carriers, and reprimanded him for poor attendance. Mr. Mulhern asserted that Ms. Madonna

³ In a February 15, 2001 letter, Mary K. Madonna, an employing establishment official, stated that, in March 2000, Mr. Mulhern "was extending his street time and combining his lunch and breaks. [Ms. Madonna] was provided with sufficient supporting documentation to substantiate discipline." Ms. Madonna interviewed a union representative and Mr. Mulhern and issued a seven-day suspension on January 13, 2000.

permitted him to combine his lunch and break times at his residence at the end of his route, in order to look after a sibling.

In response to appellant's request for reconsideration, Mr. McCabe submitted a February 19, 2002 letter, asserting that appellant had not been treated abusively, and that administrative and disciplinary actions taken against appellant were according to advice received from the labor relations office. Mr. McCabe noted that appellant requested a voluntary downgrade following their meeting, effective March 11, 2000. Mr. McCabe also noted that no disciplinary actions were taken against appellant. He recalled that, during the interview, he asked appellant, who was in charge of the stamp stock, questions about the station's reserves as someone else would be in charge of the stamps during the investigation. He noted receiving complaints that Mr. Mulhern spent excessive time at his residence, causing him to deliver the mail late, resulting in a seven-day suspension that was later reduced. Appellant approved Mr. Mulhern's overtime even though he was in a nonwork status. Regarding appellant's allegation that there was no work available for her, Mr. McCabe stated that appellant worked seven weeks before work was no longer available, and that there were two job vacancies for which she could have applied.

In a March 15, 2002 letter, appellant responded to the employing establishment's comments. She alleged that Mr. McCabe questioned her only to obtain information necessary to replace her, and that he had already "made up his mind" prior to conducting the investigation, depriving herself of the opportunity to present a defense. Appellant also alleged that she was never allowed to see customer complaints about Mr. Mulhern and thus accepted a downgrade only because she could not get any answers to her questions. Appellant asserted that, at a June 2001 meeting, Mr. McCabe and Ms. Lynch, a supervisor, stated that her work restrictions would be accommodated for six months, followed by placement either in the labor relations or operations support divisions as both were short staffed. However, when appellant returned to work, Mr. McCabe stated that he changed his mind and appellant would remain in the Albany city stations division. Mr. McCabe was then replaced as acting postmaster of Albany by Mr. Finan, who told appellant that there was no work available for her within her restrictions. Appellant requested a placement in operations support or labor relations, but Mr. Finan never followed up on these requests. Appellant stated that she did not apply for the two vacant positions as she did not timely receive a required medical clearance.

Appellant submitted her explanation of why overtime was authorized for Mr. Mulhern from December 8 to 16, 1999.

In an undated letter, Mr. Mulhern stated that it was "common practice among carriers to take lunches and breaks together at the end of their routes."

By decision dated March 20, 2002, the Office found that the evidence submitted in support of appellant's request was insufficient to warrant such modification. The Office found that there was no evidence of error or abuse regarding the administrative actions resulting in the investigation and downgrade, and that her reaction to the downgrade was not compensable. The Office further found that appellant did not establish her claims of harassment or that there was a conspiracy against her. The Office also found that appellant's frustration over not being

assigned to the labor relations or operations support divisions was not compensable as it stemmed from a desire for different duties and not from her assigned duties.

The Board finds that this case is not in posture for a decision.

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

Appellant has submitted sufficient evidence to establish that, on March 11, 1999, she was required to close daily operations in a post office with which she was unfamiliar. Appellant was also required to close operations at the Terminal Street Station on March 13, 15, 16 and 17, 1999, as well as instruct an inexperienced manager as to proper operations closure procedures. Appellant alleged that she experienced extreme anxiety due to being required to close the post office's operations. The Board has held that an employee's emotional reaction to specially assigned job duties is compensable. Thus, the Board finds that appellant has established that the requirement that she close daily postal operations is a compensable factor under *Cutler*.

Appellant also alleged that she experienced stress due to supervising Mr. Mulhern, in particular, regarding her administrative decisions to permit Mr. Mulhern to combine his lunch and break times, and to take lunch at his residence. The Board notes that appellant was in the performance of her assigned duties as Mr. Mulhern's supervisor when she made the decisions regarding his use of break and lunch times, as well as when and where he was permitted to eat his lunch. Therefore, appellant's stress over these matters is considered to be within the performance of duty as it relates directly to her assigned duties as Mr. Mulhern's supervisor under *Cutler*.⁷

Appellant also alleged factors of employment that are not compensable. Several of appellant's allegations are too general to be substantiated. Appellant alleged that, in October 1999, she became aware of a conspiracy against her by union and management personnel. However, appellant has submitted insufficient factual evidence to corroborate that the supervisors and union stewards were "out to get" her. Appellant did not provide the names of the persons involved, the content of the conversations, or witness statements corroborating her

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

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

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

⁷ *Lillian Cutler*, *supra* note 4.

account of events. Similarly, appellant also attributed her condition to feeling “shunned” by her coworkers following her acceptance of a downgrade in December 1999. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant’s burden of proof.⁸ Thus, appellant has failed to establish these allegations as factual.

Appellant attributed her emotional condition in part to the December 28 and 30, 1999 meetings with her supervisor, Mr. McCabe, being informed on March 4, 2000 that she was to be transferred, and that Mr. Finan did not follow up on her requests for specific job placements. However, an employee’s complaints about the manner in which supervisors perform supervisory duties or the manner, in which a supervisor 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 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.⁹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.¹¹ In this case, appellant submitted no evidence indicating that the transfer constituted error or abuse. Appellant has thus failed to establish a compensable factor of employment in this respect.

Appellant also alleged that she was denied a regular, fixed schedule following her return to work on June 30, 2000, and that she was not assigned to her preferred duties in the operations support or labor relations divisions. 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.¹² Administrative actions are not considered compensable employment factors in the absence of error or abuse.¹³ In this case, appellant has not submitted any evidence indicating that the employing establishment erred in denying appellant the duties or schedule she desired. Thus, she has failed to establish a compensable work factor in respect to these administrative matters. Also, the frustration over the desire for a different job or to perform particular duties is not compensable.¹⁴

As appellant has established two compensable factors of employment, the case will be remanded to the Office for further development. The Office has not yet considered the medical

⁸ *Bonnie Goodman*, 50 ECAB 139 (1998).

⁹ *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

¹² *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).

¹³ *James H. Botts*, 50 ECAB 265 (1999).

¹⁴ *Sherry L. McFall*, 51 ECAB 436 (2000).

record as it did not find a compensable factor of employment. However, as appellant has established two compensable factors of employment, the Office must fully consider the medical evidence of record. Thus, the Office shall prepare a statement of accepted facts, and refer this statement, appellant and the record to a Board-certified specialist or specialists to obtain a reasoned opinion on causal relationship, and to determine any periods of disability resulting from the accepted work factors. Following this and other such development as the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers' Compensation Programs dated March 20, 2002 is hereby set aside, and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
August 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member