U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA C. SEDORYK and U.S. POSTAL SERVICE,
POST OFFICE, Howell, MI

Docket No. 03-787; Submitted on the Record;
Issued August 28, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On or about April 12, 2001 appellant, then a 42-year-old rural carrier, filed an occupational disease claim alleging that her anxiety on or after November 6, 2000 was a result of the following: "Management not addressing behaviors causing stress and anxiety, no discipline (hostile work environment) continual 'petty' harassment by management/union/employees." On March 13, 2001 appellant was diagnosed with situational anxiety, probably affective disorder. On April 4, 2001 she was diagnosed with adjustment disorder.

To support her claim for compensation, appellant submitted a statement dated May 17, 2001. She explained that she was continually harassed through the years, that people were mean and troublesome and that it was hard to be positive in such a negative atmosphere. Appellant more specifically described her difficulties, but the bottom line, as she put it, was that she was harassed by three employees, a union steward, her supervisor and two clerks. She stated that she would be asking for three witness statements.

One witness, Candi Pamplin, a clerk, stated that she had many times heard many people talking about appellant, commenting on the clothes she wore, how she was evil and crazy, how she was going to kick a coworker's a--, how it was a big joke on the workroom floor when she received certified mail from the Equal Employment Opportunity (EEO) Commission, how some commented that they wanted to steam it open and "on and on." Ms. Pamplin stated that she had heard many nasty, snide and uncalled for remarks about appellant. She described the situation at work as hostile and stated that people at work did not care how abusive, discriminatory and harassing they were because they thought they were untouchable.

A letter from the postmaster explained that because rural carriers worked on an evaluated salary basis they were not subjected to close supervision but were expected to observe all rules and regulations and to respect the rights of their coworkers.

Appellant submitted a number of letters and notes that she had written about her difficulties and concerns at work. The record shows that she filed a complaint of discrimination against her supervisor and various people, including management, the union and employees. Appellant received a letter of warning on July 27, 2001, which she felt was retaliation for her EEO complaint.

In a decision dated November 8, 2001,[1] the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the evidence of file failed to establish that her injury occurred within the performance of duty. The Office determined that none of the allegations in appellant's May 17, 2001 statement occurred in the performance of duty.

On February 4, 2002 appellant requested reconsideration. She submitted medical evidence and requested a review of the medical evidence previously submitted. Appellant stated that others were willing to discuss the case and provide any and all support for her claim. She also submitted her notes from January and February 2002 and grievance documents regarding her leave status.

In a decision dated February 26, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was cumulative in nature and insufficient to warrant a review of the prior decision.

On October 3, 2002 appellant again requested reconsideration. She submitted letters from two doctors, a letter from the postmaster, two attending physician form reports and a completed Form CA-7. Once more appellant requested a review of the medical evidence.

In an August 27, 2002 statement, the postmaster reported as follows:

> "I am convinced that the events specified by [appellant] collectively precipitated a negative change in working conditions for [her,] which resulted in her having to leave the workplace with an acute stress condition.
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> "Taken individually some of the events experienced by [appellant] could be considered common to the workplace. Cumulatively, however, these events created a measurable and meaningful change in the work environment for [her,] who had been doing well in this environment for six years prior to the events of 2000.
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> "The incident with Mr. Crain is what I believe to be the most critical to this claim. [Appellant] mentions his complaining to me about her early start time. Her reaction was to complain to me about his harassment of her. I necessarily spoke to Mr. Crain about this and the avalanche of negative feelings toward [appellant] started. It has not subsided to date but through closer workplace supervision [she] has been further insulated from these since [appellant's] last returned to work. The hostile work environment mentioned in the claim arose from this incident and precipitated much of the reaction by [appellant]. Her coworkers aligned

[1] The memorandum in support of the decision is dated November 9, 2001.

themselves with [Mr.] Crain and shunned her. [Appellant's] work, as she knew it was turned upside down and her incapacity to work followed. The Crain allegation from my standpoint is the pivotal event in this case. This went constantly downhill for her after this event. Incidentally Mr. Crain has since retired.

"Once again, I am convinced that the events specified by [appellant] collectively precipitated a change in working conditions for [her], which resulted in her having to leave the workplace with an acute stress condition."

In a decision dated January 3, 2003, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that the postmaster's statement was generalized and that the incident concerning Mr. Crain was considered an administrative or personnel function not covered by workers' compensation.

The Board finds that this case is not in posture for decision. Further development of the evidence is warranted.

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[3] "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time, when the employee may reasonably be said to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[4]

As the Board observed in the case of *Lillian Cutler*,[5] however, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[5] 28 ECAB 125 (1976).

requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as, when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position. Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.[6]

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[7] In *Kathleen D. Walker*,[8] the employee attributed her emotional disability, in part, to disputes with coworkers. The Board noted that, while established disputes arising from the performance of one's duties could give rise to coverage under the Act, the claimant's unfounded perceptions could not constitute a compensable factor of employment. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[9]

The Board has underscored that, in claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his or her allegations of stress from "harassment" or a difficult working relationship. The claimant for compensation must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived "harassment," abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act. Based on the evidence submitted by the claimant and the employing establishment, the Office is then required to make factual findings, which the Board may review. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace, is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[10]

With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board must not be viewed as the equivalent of "harassment" as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to

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[6] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

[7] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[8] *Kathleen D. Walker* 42 ECAB 603, 608 (1991).

[9] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions that she characterized as harassment actually occurred).

[10] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

investigate and evaluate such matters in the workplace.[11] Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers.[12]

In this case, appellant seeks compensation for an emotional condition that she attributes to management's not addressing behaviors causing stress and anxiety, to a lack of discipline or hostile work environment and to continual petty harassment by management, the union and employees. She states that she was harassed by three employees, a union steward, her supervisor and two clerks.

Appellant's statements alone, however, are insufficient to establish a factual basis for her claim. A favorable final decision or formal finding stemming from her complaint of discrimination against management and her supervisor or her grievance relating to leave status would provide her substantial evidence to pursue her claim for compensation, but she has submitted no such evidence. Her complaints against the union lie outside the scope of workers' compensation, as matters pertaining to union activities are not deemed employment factors.[13] Appellant did submit a statement from Ms. Pamplin, a clerk, who explained that she had personally overheard many people making nasty, snide and uncalled for remarks about appellant. Office gossip and rumor, however, are not compensable factors of employment. In *Gracie A. Richardson*,[14] the employee asserted that she was devastated by perceptions of coworkers gossiping behind her back and spreading rumors concerning her marital and personal relationships. The Board found that the employee's emotional reaction to such gossip was not related to her job duties or requirements and, therefore, was not compensable. While it tends to support the existence of gossip in appellant's workplace, Ms. Pamplin's statement does not bear witness to any specific instance of direct harassment.

Appellant's allegations find their strongest support in the August 27, 2002 statement of the postmaster, who stated with conviction that the events specified by appellant collectively precipitated a negative change in her working conditions. The postmaster appeared familiar with these events, describing some of them as common to the workplace, when taken individually but

[11] The Act is remedial in character and the Office has the duty of administering the provisions of the Act with regard to the rights of employees and the intent of Congress. *John J. Feeley*, 8 ECAB 576 (1956). The determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Act for disability. Under the Act, for a disability determination, the employee's injury must be shown to be causally related to an accepted injury or factors of employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability under the Act. *See Daniel Deparini*, 44 ECAB 657 (1993); *George A. Johnson*, 43 ECAB 712 (1992); *Constance G. Mills*, 40 ECAB 317 (1988); *Fabian W. Fraser*, 9 ECAB 367 (1957). Findings made by the Merit Systems Protection Board or EEO Commission may constitute substantial evidence relative to the claim to be considered by the Office and the Board. *See Donna Faye Cardwell*, 41 ECAB 730 (1990); *Walter Asberry, Jr.*, 36 ECAB 686 (1985).

[12] While racial epithets, disparaging comments concerning national or ethnic origin or sexualized name-calling, jokes or innuendo do not have a place in the workplace, the proper forum for allegations of sexual harassment, discrimination or a hostile work environment are outside the Act. However, such instances may give rise to coverage under the Act, when established by the facts in evidence. *See Abe E. Scott*, 45 ECAB 164 (1993).

[13] *George A. Ross*, 43 ECAB 346, 353 (1991); *Lizzie McCray*, 36 ECAB 419, 421 (1985).

[14] *Gracie A. Richardson*, 42 ECAB 850 (1991).

explaining that cumulatively they created a measurable and meaningful change in appellant's work environment. He verified that, when he spoke to Mr. Crain about appellant's complaint of harassment, an "avalanche of negative feelings" toward appellant started. The postmaster offered no details on this avalanche, but he supported appellant's claim of a hostile work environment. He confirmed that coworkers aligned themselves with Mr. Crain and shunned appellant. The Postmaster noted that things went constantly downhill for her after this incident.

Although the postmaster's August 27, 2002 statement lacks sufficient detail to permit a specific finding of harassment, it suggests a much greater awareness of the events that transpired during the period in question. The Board finds that this evidence, together with Ms. Pamplin's general description of a "hostile" work situation, is sufficiently supportive of appellant's claim that further development of the evidence is warranted.[15] On remand the Office shall request from the postmaster, the supervisor and any other readily identifiable individual, a written statement describing with specificity any witnessed or known incident of harassment or hostility or negative feeling toward appellant on or after November 6, 2000, as well as an assessment of duration and frequency. After such further development of the evidence as may become necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation.

The January 3, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.[16]

Dated, Washington, DC
August 28, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[15] *Cf. John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was insufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

[16] The Office's review of the merits of appellant's claim on January 3, 2003 renders moot the February 26, 2002 decision to deny reconsideration.