

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN A. DONATI and U.S. POSTAL SERVICE,
POST OFFICE, Allen Park, MI

*Docket No. 03-1333; Submitted on the Record;
Issued August 13, 2003*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On August 26, 2002 appellant, then a 34-year-old distribution clerk, filed a traumatic injury claim alleging that she sustained an emotional condition due to hostile treatment from her coworkers on August 16, 2002. Appellant stated that she experienced stress due to the hostile work environment "because of a sexual crime on the job involving a supervisor." She stopped work on August 16, 2002 and returned on August 26, 2002.

By letter dated September 25, 2002, the Office of Workers' Compensation Programs advised appellant to submit factual and medical evidence supportive of her claim. However, no new factual or medical evidence was received from appellant. The case record contains statements from William Grove, Rita A. Coleman and Darwin O. Walker related that appellant had overheard a conversation between Mr. Grove and Ms. Coleman pertaining to sexual harassment and that appellant became uncomfortable. The statements further advised that the conversation was solely between Mr. Grove and Ms. Coleman and did not involve appellant.¹ In medical reports dated July 16 and 26 and August 16, 2002, Dr. Vijaya Ramesh, a Board-certified psychiatrist, advised that appellant was being treated for stress-related anxiety and depression.

By letter dated November 6, 2002, the employing establishment controverted the claim and advised that appellant's allegations of a hostile work environment were reviewed by the appropriate management level and closed as unsubstantiated. The employing establishment also submitted April 20 and September 15, 2002 letters of warning, documentation regarding a September 24, 2002 work injury to appellant's back, past grievances, previous light-duty assignments and medical records. Also submitted was a statement from a union representative

¹ From the witness statements, it is unclear whether the conversation between Mr. Grove and Ms. Coleman occurred on August 13 or August 16, 2002.

and a Step 2 grievance form pertaining to appellant's allegation of being sexually harassed/violated on June 29, 2002 by Supervisor Keith McGhee.

By decision dated February 6, 2003, the Office denied appellant's emotional condition claim on the grounds that fact of injury was not established. The Office found that appellant failed to provide a factual basis to support her claim that she received hostile treatment from her coworkers, Mr. Grove and Ms. Coleman, on August 16, 2002. The Office further found that, as appellant failed to provide a factual foundation on which to base her claim, it could not make any findings of fact on her claim.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while 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.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

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.⁵ The issue is not whether the claimant has established harassment or discrimination under standards applied by the Equal Employment Opportunity 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.⁶ To establish

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *Michael Ewanichak*, 48 ECAB 364, 66 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁶ *See Martha L. Cook*, 47 ECAB 226, 231 (1995).

entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁷

The Board finds that appellant has not submitted sufficient evidence pertaining to the alleged incidents arising at work. She referred to stress arising from hostile treatment from her coworkers on August 16, 2001 and stress due to the hostile work environment because of a sexual crime on the job.⁸ The record contains grievance filings concerning her complaints against Supervisor Mr. McGhee for an alleged incident which occurred on June 29, 2002, but she submitted no witness statements to support her allegation or a final decision on her grievance filings. Appellant was provided such an opportunity to provide such factual information in the Office's letter of September 25, 2002, but failed to respond. Given the lack of specific details and evidence in this record and the fact that appellant did not respond to the September 25, 2002 letter, the Board finds that appellant has failed to establish that the June 29, 2002 incident occurred in the performance of duty.

Regarding appellant's reaction to overhearing a conversation which occurred between two coworkers on August 16, 2002, the statements by Mr. Grove, Ms. Coleman and Mr. Walker, together with the employing establishment's finding that appellant's allegations of a hostile work environment were investigated and closed as unsubstantiated, lend support that appellant's reaction is self-generated. Unsubstantiated allegations of harassment or discrimination are not a determination of whether such incidents occurred. A claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁹

To the extent appellant has generally alleged that she was subjected to a hostile environment by her coworkers, the Board finds that appellant has failed to submit any evidence to substantiate that allegation. The employing establishment investigated appellant's allegations of a hostile work environment and found them to be unsubstantiated. Accordingly, the Board finds that appellant has failed to substantiate her claim of a hostile work environment.

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.¹⁰

⁷ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁸ The Board notes that appellant did not describe the June 29, 2002 incident in her claim.

⁹ *See Sherman Howard*, 51 ECAB 387 (2000).

¹⁰ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The February 6, 2003 decision of the Office of Workers' Compensation Programs is affirmed.¹¹

Dated, Washington, DC
August 13, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ Appellant submitted evidence after the February 6, 2003 decision and with her appeal to the Board. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and requesting reconsideration pursuant to 5 U.S.C. § 8128(a).