

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA J. BASS and U.S. POSTAL SERVICE,
CLAYTON STATION, San Francisco, CA

*Docket No. 03-1813; Submitted on the Record;
Issued August 26, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant, a 47-year-old clerk, filed a notice of occupational disease alleging that she developed an emotional condition due to stress and mistreatment at the employing establishment. The Office of Workers' Compensation Programs requested additional factual and medical evidence by letter dated January 29, 2003. By decision dated June 30, 2003, the Office denied appellant's claim finding that she failed to substantiate a compensable factor of employment.

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal 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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as 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.¹

Appellant attributed her emotional condition to actions of her supervisor, Nancy Atkinson, manager of the Golden Gate Station, which she alleged constituted discrimination, harassment or retaliation. She alleged that Ms. Atkinson yelled at her, that she asked the clerks at the Clayton Station if they liked appellant, that Ms. Atkinson screamed at her for reporting a coworker's improper time entries, that she stated that appellant was a threat to the Clayton

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

Station and that Ms. Atkinson discriminated against her for a previously accepted emotional condition. Appellant also stated that Ms. Atkinson threatened to call the guards. She alleged that her physician restricted her from working around Ms. Atkinson. In a report dated March 19, 2003, Dr. Charles Ferris, a psychiatrist, stated that he had suggested that it would be preferable if appellant worked at the Clayton Station facility, as Ms. Atkinson was rarely present. Appellant submitted a summary from the Equal Employment Opportunity (EEO) investigator, noting that statements from Ms. Atkinson did not divulge the reason for not returning appellant to her position and had ignored Dr. Ferris' suggestion that appellant work at Clayton to limit contact with Ms. Atkinson. For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.² Appellant has submitted insufficient evidence to support her claim of harassment or discrimination by Ms. Atkinson. She has submitted no witness statements or other evidence that Ms. Atkinson raised her voice or discriminated against her. Ms. Atkinson denied the allegations. In regard to the request from Dr. Ferris that appellant avoid contact with Ms. Atkinson by working at the Clayton Station, his report noted only that this was a suggestion. Therefore, appellant has failed to establish harassment or discrimination as a compensable factor of employment.

Appellant also alleged that Ms. Atkinson refused to allow her to return to work at her bid job and duty station after a temporary change of schedule, during which she worked at the Processing and Delivery Center for three months. Specifically, she stated that Ms. Atkinson failed to provide her with a limited-duty position within her restrictions. Appellant alleged that her physician restricted her standing for long periods and working around Ms. Atkinson at the Golden Gate Station. As noted above, Dr. Ferris suggested that she work at the Clayton Station as Ms. Atkinson was seldom there. He did not clearly state that appellant could or should not work with Ms. Atkinson at the Golden Gate Station or any other location. Furthermore, there is no medical evidence regarding appellant's physical restrictions included in the record. She also stated that Ms. Atkinson wanted her keys to the Clayton Station.

On July 10, 2002 as the resolution of a grievance filed by appellant, the employing establishment agreed to make every effort to grant her a job offer at the Processing and Delivery Center working Tour 3; 3:30 p.m. to midnight. Appellant submitted a grievance and an EEO complaint regarding the limited-duty job offers she received. Ms. Atkinson denied her grievance on December 9, 2002 noting that appellant was directed to report to duty at the Golden Gate Station, that management had made every effort to find a position for her in accordance with grievance settlement. She noted that appellant declined three limited-duty job offers, which were within her work restrictions.

Ms. Atkinson responded to appellant's allegations and stated that she treated appellant with respect and that she placed her at the Golden Gate facility because of problems appellant

² *Alice M. Washington*, 46 ECAB 382 (1994).

experienced with a coworker. She further stated that appellant was not denied the opportunity to come to work, but that she refused three job offers. Ms. Atkinson stated that appellant had not worked at Clayton Station for a long period of time and it was inappropriate for her to have keys to the facility.

Appellant's allegations relate to her disagreement with the work offered her. The assignment of work is an administrative or personnel matter of the employing establishment and not the duty of the employee.³ As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁴ In this case, appellant has not submitted any evidence that the employing establishment acted unreasonably in assigning her job duties, making limited-duty job offers or in requesting that she return the keys to a facility, in which she no longer works. Therefore, appellant has not established a compensable factor in regard to these allegations.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.⁵

³ *Janet D. Yates*, 49 ECAB 240, 244 (1998).

⁴ *Martha L. Watson*, 46 ECAB 407 (1995).

⁵ 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 June 30, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 26, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member