U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY PROCTOR and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

Docket No. 03-990; Submitted on the Record;
Issued December 3, 2003

DECISION and ORDER

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

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

On September 10, 2002 appellant, then a 56-year-old supervisor, filed an occupational disease claim (Form CA-2), alleging that factors of her federal employment caused a major depression, single episode. Appellant alleged that she was put in a precarious position by upper management without being properly trained and was subjected to overwhelming conditions by being verbally assaulted by employees, received written reprimands by managers and was often threatened and verbally abused by managers. She stopped work on September 3, 2002.

The medical evidence in support of appellant's claim included a September 4, 2002 disability certificate in which Dr. Laurie S. Katz, a Board-certified internist, indicated that she could not return to work. In a September 5, 2002 report, Dr. Lisa Elconin, a Board-certified internist, indicated that appellant was admitted to the psychiatric floor for uncontrolled anxiety and hostility. In a September 11, 2002 admission note, Dr. Farooq Habila, a psychiatrist, diagnosed major depression.

In support of her claim, appellant submitted several statements in which she alleged that she had been subjected to physical attacks, verbal and written threats, harassment in the form of abusive remarks and false statements and that she was forced to work in a hostile work environment, commencing with her training in the associate supervisors program (ASP). She stated that she had been verbally assaulted by one or more of the on-site training supervisors in the cancellation unit and on the ground floor operation was placed in a different location or unit every two to three months. Appellant alleged that she was never given any explanation or reason as to why these changes were made and that she was not given training consistent with the unit to be supervised. She also stated that she never knew whom she was expected to supervise or whom she was to report to from floor to floor or from day-to-day. She indicated that she was treated as though she was an unassigned craft employee because she did not have a regular

schedule or a pay location and was constantly reassigned. Appellant alleged that she was reprimanded for not following procedures without being instructed as to unit procedures; from September to December 2001, she had no work crew, no pay location and no knowledge or training regarding what was to be done; and that in June 2002, she was assigned to a hostile work environment in the light- limited-duty unit and she was not given any information about the status of the unit. Appellant cited an instance where chairs were removed from the premises without her input and stated that this caused the employees to file suits or grievances against her for failing to comply with their light-duty requests. She alleged that an August 24, 2002 memorandum, issued from the senior manager to the lead manager, stated that she should be replaced because of numerous infractions and charges against her in the light- limited-duty unit. Appellant was required to handle all grievances generated from decisions made by up-line managers concerning the light- limited-duty unit and she was named as the one person in each and every case filed, which made her feel that she was responsible, despite not having any ability to make changes or decisions for the unit. She stated that she was required to work from two to four hours past her tour without compensation or assistance. Appellant alleged that threats were made against her and her efforts to work as a supervisor were sabotaged and disrespected as she was blamed for all infractions. She stated that she was blamed for pay shortages and grievances which caused her to feel emotionally overwhelmed and intimidated. Appellant indicated that these actions caused her to become so stressed that she could not perform ordinary chores and had major depression with an inability to concentrate. She was diagnosed with paranoia, mood swings and anxiety and, as a result of these effects, was required to attend behavior therapy sessions daily.

By letter dated October 18, 2002, the employing establishment controverted the claim and denied that appellant received inadequate training, denied her allegations of physical and verbal attacks and indicated that she displayed adverse reactions to review instructions and management counseling related to her work performance.[1]

In an October 28, 2002 letter, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish her claim. She was advised to submit a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment. Appellant was allotted 30 days to submit the requested evidence. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

In a November 19, 2002 statement, appellant described her duties and the incidents that she believed contributed to her illness. She stated that she had not filed any grievances or Equal Employment Opportunity claims against the employing establishment, but that several grievances had been filed against her, as well as letters of irregularities that she had been absent without leave. Appellant stated that there were no adverse situations outside her employment. She specifically explained that during her ASP training, she continuously informed the managers and the ASP coordinator that she was experiencing problems which affected her ability to successfully complete training in the various operations and that she felt that it was hindering her

[1] The employing establishment contended that appellant's allegation were not substantiated and did not contain any specifics, such as names, dates or details.

from performing and learning the operations as well as she should. Appellant stated that during week five of the ASP training, she was assigned to work in the cancellation unit under the training of supervisor, Patricia Williams and the acting manager of distribution operations, (MDO) Jacquelyn Bowman. She stated that on her first day in the unit, she was challenged with verbal confrontation by the on-site trainer, Ms. Williams. Appellant indicated that she reported this to the ASP coordinator Alzana Braxton as well as her coach and manager, Render Bryant. She indicated that Mr. Bryant was aware of Ms. Williams' attitude, but responded that the trainers were selected by GWY manager Ceolia Ford and that nothing could be done because the trainers had not volunteered for these positions, but were more or less forced to perform them.[2] Appellant stated that, Larry Fellows was the other trainee assigned to cancellation at this time and that he too witnessed Ms. Williams' behavior towards her.[3] She indicated that she began to feel stressed out and discouraged from continuing the program, especially since she was told that the trainers would not be held accountable for their behavior. Appellant indicated that she as a trainee was expected to endure whatever actions were taken against her as though she was a candidate for boot camp instead of a supervisor/trainee. She stated that after she was charged with being a trouble maker, she felt that this was not going to work out unless she changed, so she endured all the attacks and accusations made against her during her training. Appellant stated that after she was assigned as an associate supervisor, she was never offered a permanent assignment, instead, she was moved around from unit to unit. She cited an example where after she had participated in the ASP program for 14 weeks without any time off, she requested 80 hours leave from Ms. Bowman. Appellant stated that this was the first time she had requested leave since starting in the program and she was given absent without leave, with the manager claiming that she had not given advance notification and when appellant located the 3971 form in the unit desk drawer, she claimed that she had not been aware that appellant had submitted it. She indicated that this was the first of two absent without leaves that she received by recommendation of this same manager.[4] Appellant also stated that in July 2002, more drastic and unusual changes began to occur. The unit received a new and incoming senior plant manager who initiated certain orders and changes in the regular practices and policies of the light- limited-duty unit. Appellant stated that she became too overwhelmed with all the grievances and complaints that had resulted from charges by the employees. She also indicated that she was accused of falsifying documents and then reprimanded for not knowing what action to take or when to take action.

On November 25, 2002 the Office received four pages of ASP Class eight concerns regarding types of training. The employing establishment indicated that there was no set time for reviewing evaluations and ASP candidates were not allowed to work beyond eight hours a day.

[2] In an April 13, 2001 on site trainer evaluation form, regarding Ms. Williams, appellant filled out that she felt there was little or no input and she felt the trainer was offensive and threatening.

[3] Appellant stated that Mr. Fellows had returned to a previous assignment at the Jackson, Michigan employing establishment as a carrier.

[4] In a March 8, 2002 routing slip, appellant requested a meeting regarding her receipt of an absent without leave slip. In an April 24, 2002 nonbargaining settlement agreement, the parties agreed that the absent without leave recorded for appellant's absence on February 27, 2002, would remain a matter of record for a period of a year, however, a review would take place after a six-month period with consideration given to remove the absent without leave, if improvement was noted in her attendance.

The employing establishment also indicated that appellant did not receive an evaluation for weeks four and five due to vacation and sick leave usage by the on-site trainers. It was noted that it was the MDO ' s responsibility to select an alternate supervisor to complete the evaluation form. Regarding on site training, the employing establishment noted that the on-site instructor was absent when appellant was being trained, however, she was given a tour by Oscar and Michael Gill. The employing establishment also addressed concerns regarding classroom instruction, starting times, assignments by candidates, productivity, ratings and meetings with coaches.

In a November 29, 2002 response, the employing establishment denied appellant's allegations, controverted the claim and enclosed statements.

In an October 12, 2002 email, Emmanuel J. Thomas confirmed that he and Carla Norris trained appellant in the light-duty unit. In a September 20, 2002 statement, Linda Morris, an acting supervisor, indicated that she worked with appellant for five months training and assisted her in running the light- limited-duty unit. She stated that she ran the operation as far as processing the mail, while appellant did paper work and entered employees' time.

In a November 20, 2002 statement, Milton Durham, MDO, denied that appellant worked in a hostile work environment. He indicated that supervisors were to follow the procedures to take corrective action on employees' conduct and to take timely action on employees' physical attacks, threats and harassment. Mr. Durham stated that appellant was utilized as a relief supervisor in the cancellation unit and on the ground floor and this was only done due to the short staffing of EAS's that were assigned to the operations. He informed appellant that she would be utilized in cancellation and on the ground floor due to an EAS staffing shortage and at that time she welcomed the change and did not voice any disagreement. Mr. Durham stated that corrective action was taken for appellant's failure to follow procedures when not able to report for duty and failure to follow procedures to complete the 1769 form timely. He indicated that he had always treated appellant with dignity and respect and had no knowledge that she had been disrespected by anyone in management. Mr. Durham attached statements from acting supervisors who worked with appellant and indicated that she had assistance everyday that she was assigned to the standard letters unit. He indicated that there were two supervisors assigned to one unit. Mr. Durham confirmed that appellant had time to take corrective action on employees during her tour of duty and indicated that he had no knowledge that she stayed two to four hours past her tour. He stated that appellant did not bring to his attention that she was having problems with management and craft employees.

In a November 22, 2002 statement, Carol Brown, a light- limited-duty coordinator, indicated that she worked directly with appellant for two weeks, advising that they alternated between supervising the unit and office paperwork. She stated that appellant had mentioned that some of the clerks' conduct was disrespectful and Ms. Brown informed appellant to enforce ELM policy on conduct. Ms. Brown stated that during their time together, she treated appellant with dignity and respect and assisted her during her own supervisor's absence to ensure that appellant had help with daily operations. She opined that they did not work in a hostile environment, but stated that the unit did reflect a lack of leadership in that employees were not productively working, there were attendance irregularities that were not addressed and

employees frequently left their assignment. Ms. Brown noticed this on her first day in the unit, that she and appellant discussed corrective actions and mutually agreed to the actions they needed to take.

On December 2, 2002 the Office received the employing establishment's 16-week training outline.

In a December 9, 2002 decision, the Office found that appellant failed to establish that she sustained an injury in the performance of duty.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every 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 or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[5] 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.[6]

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 sufficient to establish compensable employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that a compensable employment factor caused or contributed to the emotional condition.[7]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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 the physician, when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[8] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

[5] 5 U.S.C. § 8101-8193.

[6] *Jamel A. White*, 54 ECAB ___ (Docket No. 02-1559, issued December 10, 2002); *see Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.*,42 ECAB *566* (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

[7] *Andy J. Paloukos*, 54 ECAB ___ (Docket No. 02-1500, issued July 15, 2003); *Kathleen A. Donati*, 54 ECAB ___ (Docket No. 03-1333, issued August 13, 2003); *Marlon Vera*, 54 ECAB ___ (Docket No. 03-907, issued September 29, 2003).

[8] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[9]

Appellant alleged that she never had a regular schedule; that she was given written and verbal reprimands; that she was forced to work with employees who had behavioral disorders, traumatic and personal injuries, that grievances were filed against her; that she was charged with violations and irregularities and not following the employing establishment's procedures; that she failed to accommodate light duty; that she was forced to work overtime and that she was never given a permanent assignment. The Board finds that these matters relate to administrative or personnel matters and are unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[10] Although the handling of disciplinary actions and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and are not duties of the employee.[11] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[12] Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these administrative matters.[13] Thus, appellant has not met her burden of proof to establish a compensable employment factor under the Act with respect to administrative matters.

Appellant also alleged that she was accused of being a trouble maker and that she had to work overtime. The employing establishment denied these claims and appellant did not submit any witness statements or evidence to corroborate her claims. She did not provide sufficient evidence to document the alleged overwork and, consequently, this allegation was not established by the evidence.[14]

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[9] *Id*.

[10] *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).

[11] *Id*.

[12] *Paul L. Stewart,* 54 ECAB ___ (Docket No. 03-1 107, issued September 23, 2003); *Andy J. Paloukos,* 54 ECAB ___ (Docket No. 02-1500, issued July 15, 2003); *Judy C. Rogers,* 54 ECAB ___ (Docket No. 03-565, issued July 9, 2003); *Debora L. Hanna,* 54 ECAB___ (Docket No. 03-555, issued April 23, 2003); *Hong D. Nguyen,* 54 ECAB ___ (Docket No. 01-552, issued February 28, 2003); *Ana D. Pizarro,* 54 ECAB ___ (Docket No. 02-1036, issued February 27, 2003); *Jamel A. White,* 54 ECAB ___ (Docket No. 02-1559, issued December 10, 2002); *see Richard J. Dube,* 42 ECAB 916, 920 (1991).

[13] To show that an administrative action implicated a compensable employment factor, a claimant would have to show that the employing establishment committed error or abuse. *Hasty P. Foreman,* 54 ECAB ___ (Docket No. 02-723, issued February 27, 2003).

[14] *Bonnie Goodman,* 50 ECAB 139 (1998).

Appellant alleged that she was physically attacked, harassed by abusive remarks and verbally assaulted by one or more of her supervisors and accused of making false statements. To the extent that disputes and incidents alleged as constituting harassment and discrimination by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[15] However, for harassment or discrimination to give rise to a compensable disability under the 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.[16] The employing establishment denied these allegations. Appellant did not submit any evidence such as witness statements to support her allegations.

Appellant also related that her supervisors behaved toward her in a hostile and abusive manner, changed the procedures and failed to train her. She also stated that she felt she was in a hostile work environment. Regarding the alleged hostile and abusive treatment, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by any of her supervisors or coworkers.[17] She did not submit any statements from coworkers or supervisors to corroborate her allegations. A certain amount of specificity is necessary to establish the factual basis of appellant's claim.[18]

Regarding her allegation that she was not prepared for her position with adequate training, she has not submitted corroborating evidence. The employing establishment denied her allegation and provided documentation concerning training. Matters involving the training or discipline of employees is an administrative function.[19] Although appellant has augured that the employing establishment erred in its training or discipline these allegations are unsubstantiated.

Appellant also alleged that her work locations would regularly change and the only notice she would receive would be a few days prior to starting at the location. The Board has held that an employee's dissatisfaction with working in an environment which is considered to be tedious, monotonous, boring or otherwise undesirable constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under

[15] *Brian H. Derrick,* 51 ECAB 417 (2000); *Sherry L. McFall,* 51 ECAB 436 (2000).

[16] *Janice I. Moore,* 53 ECAB ___ (Docket No. 01-2066, issued September 11, 2002); *Michael A. Salvato,* 53 ECAB ___ (Docket No. 01-1790, issued July 16, 2002); *Janet L. Terry,* 53 ECAB ___ (Docket No. 00-1673, issued June 5, 2002); *Judy L. Kahn,* 53 ECAB (Docket No. 00-457, issued February 1, 2002); *Barbara J. Latham,* 53 ECAB — (Docket No. 99-517, issued January 31, 2002); *Michael A. Deas,* 53 ECAB ___ (Docket No. 00-1090, issued November 14, 2001); *Kim Nguyen,* 53 ECAB ___ (Docket No. 01-505, issued October 1, 2001).

[17] *See Joel Parker, Sr.,* 43 ECAB 220 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[18] *Linda K. Cela,* 52 ECAB 288 (2001).

[19] *James E. Norris,* 52 ECAB 93 (2000).

the Act.[20] The Board notes that appellant's reaction to such conditions and incidents at work are considered to be self-generated.[21]

Appellant submitted copies of a nonbargaining settlement agreement concerning leave violation. This evidence, however, does not support her allegations that her supervisors harassed or discriminated against her and, thus, is of little probative value.

For the foregoing reasons, appellant has not established a compensable employment factors under the Act. Therefore, appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[22]

The December 9, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 3, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[20] *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000).

[21] *John Polito*, 50 ECAB 34 (1999).

[22] 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).