U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY DARK and U.S. POSTAL SERVICE,
POST OFFICE, Beaumont, TX

Docket No. 01-2178; Submitted on the Record;
Issued February 3, 2003

DECISION and ORDER

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

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

On August 17, 2000 appellant, then a 37-year-old postal clerk, filed a claim for occupational disease alleging that she developed chronic depression, psychiatric problems and mental anguish as a result of chronic pain, harassment and discrimination stemming from her accepted bilateral carpal tunnel syndrome. In narrative statements submitted in support of her claim, appellant noted that she had worked light duty since 1996, when she was diagnosed with bilateral carpal tunnel syndrome, which was accepted by the Office of Workers' Compensation Programs. She became depressed as she could no longer do things and had chronic pain. She stated that management and coworkers treated her differently since her injury and alleged that she was forced to work outside of her physical restrictions. Her schedule was changed from 1:00 p.m. to 9:30 p.m. to 5:00 p.m. to 1:30 a.m., while other workers with similar injuries were allowed to keep their former schedules. Appellant alleged that her request to transfer to a new job location was denied based on her medical condition and an unfair performance appraisal, which forced her to drive 85 miles each way to work. Appellant alleged that she was followed around town by a postal inspector and received a letter of warning for unsafe behavior. Appellant filed several Equal Employment Opportunity (EEO) complaints alleging that she had not been given time off to seek medical treatment and that her work restrictions were ignored. Appellant alleged that her workers' compensation payments had been wrongly delayed, which caused her to have to use food stamps, go into debt and develop a bad credit rating.

By decision dated October 24, 2000, the Office denied appellant's claim on the grounds that she failed to establish any compensable factors of employment. Appellant requested an oral hearing and by decision dated July 6, 2001, an Office hearing representative affirmed the October 24, 2000 decision.

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

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 an 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 his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] 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.[2]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated July 6, 2001, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, issued unfair performance evaluations and wrongly denied leave, the Board

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[6] *Id.*

finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[7] Although the handling of disciplinary actions, evaluations and leave requests, are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[8] 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.[9] With respect to the letter of warning, appellant submitted a May 30, 2001 settlement agreement, which placed her on probation and offered reduction of the letter of warning to an official discussion pending good behavior. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[10] With respect to her remaining allegations, appellant has submitted insufficient evidence of error or abuse on the part of the employing establishment. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Regarding appellant's allegation of denial of a transfer request, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform his regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[11] Thus, appellant has not established a compensable employment factor under the Act in this respect. Regarding her allegation that the transfer denial meant that she had to drive 85 miles each way to her job, the Board has noted that the stress and strain of highway travel experienced by an employee could be characterized as self-generated and arising from hazards of the journey shared in common by all travelers.[12]

Appellant also alleged that the employing establishment changed her shift from 1:00 p.m. to 9:30 p.m. to 5:00 p.m. to 1:30 a.m. while other workers with similar injuries were allowed to keep their former schedules. She stated that for the three months she was required to work this later shift she was unable to see her daughter. As noted above, disability is not covered where it results from such factors as frustration from not being permitted to work in a particular environment or to hold a particular position. On the other hand, the Board has held that a change in an employee's duty shift may under certain circumstances be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.[13] In the

[7] *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).

[8] *Id.*

[9] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[10] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[11] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

[12] *See Adele Garafolo*, 43 ECAB 169, 172 (1991).

[13] *See Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

present case, appellant has not submitted sufficient evidence to establish that the employing establishment effectuated a change in her duty shift to constitute a compensable employment factor. Appellant merely made an allegation concerning this matter without providing specific details or sufficient evidence to establish error or abuse on the part of the employing establishment. Further, appellant's assertion that other employee's were allowed to keep their shifts after returning from an injury is in effect, an assertion of discrimination. Mere perceptions of harassment or discrimination are not compensable under the Act.[14] In the present case, appellant provided insufficient corroborating evidence in support of her claim of discrimination, thus appellant has not established a compensable employment factor under the Act with respect to the shift change.[15] With respect to appellant's allegation that her shift was changed, in part, because the union mishandled her claim, the Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.[16]

Appellant also asserted that her supervisors and coworkers made statements and engaged in actions, which she believed constituted harassment, often provoking her to tears. However, appellant provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[17] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

With respect to appellant's allegation that she was embarrassed in front of her family by the actions of the postal inspector, who followed her into a restaurant and to her doctor's office, the Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.[18] 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.[19] Although appellant have made allegations that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of her were unreasonable.[20] Thus, appellant has not established a compensable employment factor under the Act in this respect.

---

[14] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[15] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[16] *See Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

[17] *See William P. George*, *supra* note 15.

[18] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[19] *See Richard J. Dube*, *supra* note 9.

[20] *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

Regarding appellant's allegations that the employing establishment mishandled her compensation claims causing her to go on food stamps and develop a bad credit rating, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[21]

Appellant also asserted that a major contributor to her depression was the chronic pain and disability resulting from her accepted bilateral carpal tunnel syndrome. She stated that she is depressed because she can no longer do things that she could do before she developed carpal tunnel syndrome, like play with her daughter and that she experienced chronic pain. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury are covered under the Act.[22]

Finally, appellant stated that she was forced to work outside of her restrictions, which specified that she only work a maximum of six hours a day, not eight. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.[23] In this case, while the complete records pertaining to appellant's carpal tunnel syndrome are not contained in this record, the record before the Board does contain a February 5, 1998 report from Dr. Jack G. McNeil in which he stated that appellant could return to work as a key operator with a 5-minute break every 30 minutes and only work 4 hours a day, or with a 10-minute break every 30 minutes and work only 6 hours a day. A limited-duty job offer from the employing establishment dated March 5, 1998 lists Dr. McNeil's restrictions, but states that appellant was released to work eight hours a day. When appellant declined the job offer on the basis that it was for more than the specified six hours a day, she received a letter from the Office stating that the position had been found suitable and she had 30 days to accept the position. While the record before the Board is not complete on this issue, the record does contain sufficient evidence to develop the issue of whether appellant was required to work outside of her physical restrictions.

In the present case, appellant has established a compensable employment factor with respect to her chronic pain from her accepted bilateral carpal tunnel syndrome. She he has also implicated a compensable employment factor. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for further development.[24] After such further development as deemed necessary, including doubling this claim file with appellant's carpal tunnel claim file and determining whether she was required to work outside of her medical restrictions, the Office should issue an appropriate decision on this matter.[25]

---

[21] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[22] *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

[23] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[24] *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

[25] FECA Bulletin No. 97-10 (issued February 15, 1997) discussed the doubling of claims.

The decisions of the Office of Workers' Compensation Programs dated July 6, 2001 and October 24, 2000 are hereby set aside and the case is remanded to the Office for further development consistent with this decision of the Board.

Dated, Washington, DC
February 3, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member