

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLORENDA B. WHITING and U.S. POSTAL SERVICE,
STATION A, New Orleans, LA

*Docket No. 02-225; Submitted on the Record;
Issued February 20, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition on or about March 15, 2000 while in the performance of duty, as alleged.

On April 26, 2000 appellant, then a 39-year-old letter carrier, filed a claim asserting that she sustained an emotional condition on March 15, 2000 as a result of her federal employment.¹ She stated that her supervisor, Kevin C. Phillips, verbally abused her openly on the workroom floor in front of her peers:

“When he expose[d] the manager [W.F. Orth’s] personal business openly on the workroom floor. He was expecting everyone to be sympathetic about [the] Wayne Or[th] situation. Unfortunately I was not one of them. When he heard me rejoicing that is when he singles me out and challenge me openly on the workroom floor and used me as an example to others. When I began to protect my character he told me to shut up. ‘I tried to explain to him the reason why I felt the way I did, was because of the negative treatment that I was subjected to, by [Mr.] Or[th].’ I believe that because I did [not] feel the way that [Mr.] Phillip[s] wanted me to, is what prompt him to verbally abuse me on the workroom floor in front of my peers. I felt a shamed and worthless. He pointed his finger at me and yelled at me and told me that he was giving me a [d]irect [o]rder to not ever talk at another [d]aily [m]eeting. I told [Mr.] Phillip[s] that under the constitution (Freedom of Speech) ‘You can[not] tell me to shut up.’ When others are also talking. [Mr.] Phillip[s] told me [let us] go into the office. I told him that we can go into the office but it [will not] be with Perry Smith. He yelled and told me to shut up and punch out and leave the premises. I left in distressed.”

¹ In a previous case (OWCP File No. A16-0141164), the Office of Workers' Compensation Programs accepted that appellant developed an adjustment disorder while in the performance of duty on or about November 19, 1987.

Appellant requested an appointment with an Equal Employment Opportunity (EEO) counselor on March 15, 2000 to allege discrimination concerning Mr. Phillips' direct order not to speak at service talks and to punch out and go home.

Appellant alleged that Mr. Phillips violated postal policy by discussing Mr. Orth's personal business openly on the workroom floor. She alleged that Mr. Phillips made false allegations about her on the workroom floor: Mr. Phillips led others to believe that appellant had returned to work that day and verbally attacked him in the lobby. He also described her clothing in an explicit manner. Appellant alleged that Mr. Phillips had created a sexually hostile work environment for her to the point that she feared going back to work. She also alleged that Mr. Orth had written a derogatory statement about her history of psychiatric problems and that she feared her coworkers, who all knew about it, would no longer have the same respect for her.

Mr. Phillips responded:

"On March 15[,] [20]00 I Supervisor Phillips was giving a [s]ervice [t]alk to the Office, when I was rudely interrupted twice by [appellant]. I asked her to be quiet, but to no avail she continued to talk and replied, 'You can[not] tell me to be quiet.' So I then instructed her to be quiet. She replied, 'I can talk if I want to. You can[not] shut me up.' I then told [appellant] that I wanted to see her and Union Steward Perry Smith in the office. She replied, 'I am not going anywhere with him or anyone else.' I then instructed [appellant] to punch out and go home."

Mr. Phillips described what happened later that morning. While in the lobby making copies, he saw appellant, walked over to her and said, "[e]xcuse me, Ms. Whiting, I want you to report tomorrow at your regular reporting time." She replied, "Okay, I thought I had the whole week off." After returning the copy machine keys, Mr. Phillips spoke to Acting Supervisor Penn: "I just saw Ms. Whiting in the lobby. All dressed up. I told her to report to work tomorrow at her normal time." He explained that the reason he stated that appellant was all dressed up was to let Ms. Penn know that appellant did in fact leave, because she went home to get dressed. "This in no way had any bearing on what she had on or how it fit or what color it was."

Mr. Orth related what Mr. Phillips had told him about the morning service talk on March 15, 2000. He stated: "I instructed Supervisor Phillips to have a prediscipline interview when she returned and to request discipline for disrupting the operation."

Upon returning to work on March 16, 2000, appellant gave Mr. Phillips written notice that she would be bringing harassment and other charges against him. She requested a Step 1 meeting, which was held that day.² She also requested an appointment with an EEO counselor and alleged discrimination concerning Mr. Phillips' actions in approaching her in the lobby on March 15, 2000, in spreading false allegations about her and in discussing her clothing to others.

² On June 6, 2000 a grievance was settled by mutual agreement. The settlement acknowledged that the facts remained in dispute.

On March 23, 2000 Mr. Orth requested a fitness-for-duty examination of appellant for the following reason: “[Appellant] has exhibited irrational behavior at the daily service talk and was ordered off the premises. [Appellant] has a history of psychiatric problems.”

On April 29, 2000 appellant called to advise that she would not report for duty because she was sick. On that same day a letter of warning charged appellant with “[u]nacceptable [w]ork [c]onduct, *i.e.*, [f]ailure to [f]ollow [i]nstructions.”³

Appellant asserted that she did not create a disturbance at the March 15, 2000 meeting. In statements from three people, one acknowledged that when Mr. Phillips asked her to stop talking appellant responded that she could listen and talk. Another stated that appellant “just spoke up which [she] should be allowed to do during the upfront.” Appellant also asserted that she had worked under continual harassment and aggravation by management and that her medical record proved that her condition had worsened.

On October 31, 2000, after further development of the evidence, the Office issued a decision denying appellant’s claim for compensation. The Office found that appellant had failed to establish a factual basis for her allegations and that there was no evidence of error or abuse by the employing establishment.

Appellant requested a review of the written record by an Office hearing representative.

In a decision dated May 9, 2001, the hearing representative affirmed the denial of appellant’s claim. She attributed an aggravation of her preexisting emotional condition to events on March 15, 2000 and she made vague references to harassment in general. The hearing representative found, however, that appellant failed to substantiate a compensable factor of employment. The evidence did not establish error or abuse by Mr. Phillips or Mr. Orth.

The Board finds that appellant has not met her burden to establish that she sustained an emotional condition on or about March 15, 2000 while in the performance of duty, as alleged.

Workers’ compensation law does not cover each and every injury or illness that is somehow related to employment.⁴ An employee’s emotional reaction to an administrative or personnel matter is generally not covered. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.⁵ Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.⁶

³ Although Mr. Phillips’ name appears at the bottom of the letter of warning, he did not sign it.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Margreat Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 42 ECAB 566 (1991), *reaff’d on recon.*, 41 ECAB 387 (1990).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

In this case, appellant attributes her emotional condition or the aggravation of her previously accepted emotional condition, to the actions of her supervisor, Mr. Phillips, and the manager, Mr. Orth, stemming from the events that occurred on and after March 15, 2000. As a general matter her emotional reaction to the discharge of supervisory or managerial duties lies outside scope of coverage of workers' compensation. To bring her claim within the scope of coverage, appellant must substantiate her allegations of error or abuse with probative and reliable evidence.

The record in this case contains no such evidence. Appellant implicated the actions of her supervisor and manager but offered no persuasive evidence to establish that they acted outside the bounds of their supervisory duties.⁷ She filed grievances and alleged discrimination in precompliant EEO counseling, but she submitted to the record no administrative findings or final decisions to prove the administrative error or discrimination alleged. Settlements and stipulations that admit no wrongdoing are of no probative value. However strongly appellant feels that she was the victim of abuse or discrimination, she did not discharge her burden of proof. The evidence of record does not establish that abuse or discrimination did, in fact, occur. There is no proof that administrative error, abuse or discrimination occurred as alleged. Appellant has failed to establish a factual basis for her claim.

The May 9, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
February 20, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ Appellant did submit several witness statements to support that she did not disrupt the March 15, 2000 service talk or create a disturbance, but the record contains statements to the contrary. Appellant's own account supports that she prompted Mr. Phillips' reaction with her "rejoicing" over the news that Mr. Orth was losing his position as station manager.