U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE L. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, North Branford, CT

Docket No. 02-1821; Submitted on the Record;
Issued February 4, 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 February 22, 2001 appellant, then a 53-year-old window clerk, filed a claim for occupational disease alleging that she developed an emotional condition as a result of being constantly harassed and discriminated against by Postmaster Sean M. Ford. In narrative statements and testimony submitted in support of her claim, appellant alleged that in November 1999 her cash drawer had been audited and found to be $500.00 short and she was given a letter of demand. Appellant denied any culpabilty in the shortage and filed a grievance against the demand letter. She alleged that, when Mr. Ford arrived as postmaster in October 2000, he harassed her about the shortage, reminding her that the matter had not yet been officially resolved and implied that she was guilty of stealing. Appellant alleged that Mr. Ford repeatedly asked her when she was going to retire or when her home renovations, for which she repeatedly took leave to supervise, were going to be completed, stating that she was costing the employing establishment a lot of money. She asserted that, on January 23 and January 30, 2000, Mr. Ford threatened to change her schedule to a less desirable one unless she persuaded a union steward to drop a grievance that had been filed against him for performing bargaining unit work. When appellant refused, Mr. Ford did change her days off.

Appellant further alleged that, on February 6, 2001, Mr. Ford called her into his office to discuss training issues and that appellant avoided performing certain tasks. She alleged that, while she cased mail, Mr. Ford kept telling her that she had to work faster and when she took a break to get something for herself at the window, he told her to do it on her own time. Appellant asserted that Mr. Ford would change her schedule before changing anyone else's and would call others to come in for overtime but not her. She alleged that he repeatedly reprimanded her, but not others, for not wearing her uniform tie while working at the window, twice corrected her in front of customers to whom she was trying to explain new policies and required her to take a three-week bulk mail training course and then pass an examination when he allowed a white

coworker to take only a one-week training course and skip the examination. Appellant alleged that Mr. Ford did all of these things in an effort to make her quit.

By decision dated April 20, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she failed to establish any compensable factors of employment. She requested an oral hearing and by decision dated March 21, 2002, an Office hearing representative affirmed the prior denial.

The Board finds that appellant has not met her burden of proof to establish that she developed an emotional condition in the performance of duty, causally related to factors of her federal employment.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment as contributing to her condition. 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

[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).

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 March 21, 2002, 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 assertions that Mr. Ford changed her scheduled days off in retaliation for a grievance that had been filed against him, reminded her that the $500.00 shortage had not been finally resolved, called her into his office to discuss training issues and appellant's performance, told her to case mail faster, told her to conduct personal business on her own time, changed her window schedule,[7] declined to call her for overtime,[8] repeatedly reprimanded her for not wearing her uniform tie while working at the window, twice corrected her in front of customers to whom she was trying to explain new policies and required her to take a three-week bulk mail training course and then pass an examination, the Board 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.[9] Although these matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[10] 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.[11] In response to appellant's allegations, Mr. Ford submitted a narrative statement in which he acknowledged speaking with all of his employees at one time or another concerning administrative or operational needs and that these discussions were sometimes upsetting to the employees because they usually involved changes. With respect to the change in appellant's scheduled days off, Mr. Ford explained that a grievance had been filed against him for performing bargaining unit work and that, during his January 23, 2001 meeting with appellant, he did not threaten her, but rather informed her that should the grievance

[6] *Id.*

[7] The assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment. *Helen P. Allen*, 47 ECAB 141 (1995).

[8] Desire for overtime work does not arise as a compensable factor of employment. *Peggy R. Lee*, 46 ECAB 527 (1995).

[9] *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).

[10] *Id.*

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

go forward, he would have to cease performing bargaining unit work and this could dictate some schedule changes which would directly affect appellant. Later, when the grievance went forward and he agreed to properly utilize available clerks, the availability of clerk staff and the operational needs of the establishment necessitated appellant's schedule changes. In response, appellant grieved the action and on March 9, 2001 her original scheduled days off were reinstated. However, the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.[12] In this case, the record contains no information concerning the basis for the schedule reinstatement and, therefore, there is insufficient evidence of error or abuse with respect to this matter.

With respect to her remaining allegations, Mr. Ford stated that he never commented on appellant's $500.00 shortage, which was still pending and out of his hands or her productivity and he tried to accommodate her requests for leave without pay to oversee her house renovations.[13] He stated that he tried to work with appellant regarding any schedule changes, that appellant was not on the overtime desired list and that he did not recall appellant's conducting personal business at the window to be an issue. He stated that it was his policy never to let a customer leave the window with the wrong information and, therefore, he always corrected any mistakes he observed the window clerks making. Mr. Ford stated that neckties are part of the employing establishment uniform and that the employing establishment was regularly audited to document, among other things, whether the clerks were wearing their neckties. Therefore, he was careful to enforce the dress code with his employees. Mr. Ford denied appellant's allegations and explained the reasons for his various administrative or personnel actions. Appellant has not provided evidence to establish error or abuse on the part of Mr. Ford or other members of the employing establishment. Appellant has not established any compensable employment factors under the Act with respect to these administrative matters.

To the extent that appellant is alleging that Mr. Ford performed his administrative duties in such a way as to harass her or disparately treat her, to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[14] 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.[15] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish

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

[13] Generally, actions of the employing establishment, in matters involving the use of leave, are not considered compensable factors of employment. An employee's emotional reaction to the employing establishment's action on a request for official time to engage in personal activities is not generally compensable because it arises out of an administrative or personnel matter and is not considered to be sustained in the performance of duty. *Lillie M. Hood*, 48 ECAB 157 (1996).

[14] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

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

that she was harassed or discriminated against by her supervisors or coworkers.[16] While appellant provided testimony from six coworkers in support of her claim, each of these coworkers testified only to their own conflicts with Mr. Ford and did not provide any corroboration for appellant's specific allegations. As appellant alleged that Mr. Ford made statements and engaged in actions which she believed constituted harassment and discrimination, but 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 and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.[18]

The decision of the Office of Workers' Compensation Programs dated March 21, 2002 is hereby affirmed.

Dated, Washington, DC
February 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[16] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

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

[18] 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).