

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DINAH J. CURRY and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 03-693; Submitted on the Record;
Issued July 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of her federal duties.

On a September 11, 2001 appellant, then a 41-year-old clerk in the safety office, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she became stressed after an altercation with her supervisor. Appellant wrote that on September 11, 2001 Supervisor Ricki Edeburn told appellant and a coworker not to talk about the terrorist attack and to return to work. According to appellant she was fearful because they worked in a federal building. Appellant responded by telling her supervisor that she could not tell them what to talk about, causing Ms. Edeburn to scream at her. Appellant then called the human resource department and left a message. A few minutes later Phil Pelch, an up-line supervisor from human resources called and spoke to appellant. Mr. Pelch then asked to speak to Ms. Edeburn. According to appellant, after Ms. Edeburn got off the telephone with Mr. Pelch, she stared at appellant and looked angry. Appellant wrote that she became fearful of Ms. Edeburn because she would not stop staring at her, so she left to pick up mail, a part of her daily assignments. According to appellant, when she returned from picking up the mail Ms. Edeburn called her into her office and accused her of not working and continued to harass her. Appellant became upset and left. She did not return to work for 45 days.

In support of her claim, appellant submitted a September 17, 2001 work status note from Dr. Beatrix Urvat, a psychiatrist, who wrote that appellant could return to work on September 18, 2001, but not in the same location as her supervisor, Ms. Edeburn, because appellant feared a physical attack from Ms. Edeburn. In a September 25, 2001 letter, Dr. Urvat diagnosed appellant with recurrent major depressive disorder.¹

¹ Appellant's medical history includes an employment-related post-traumatic stress disorder condition in 1990 resulting from a dog attack.

In a September 11, 2001 statement, Ms. Edeburn wrote that she announced to the employees that, although the terrorist attacks were horrible, they should focus on the tasks at hand and not let it be a total distraction. According to Ms. Edeburn, appellant became irate and told her that she could not tell them to not talk about the attacks and that she was going to call her Congressman. Ms. Edeburn wrote that appellant then left her work area, returned to update her coworkers on the news and then left again. When appellant returned and was about to leave for lunch, Ms. Edeburn called appellant into her office and asked if her absences were work related. Appellant said no and then said she wanted a CA-1 form because Ms. Edeburn was stressing her out.

In a September 20, 2001 letter, the employing establishment offered appellant a position in a different location which appellant accepted.

In a letter received on September 25, 2001, Isadore Meza wrote that on September 11, 2001 he experienced what he perceived as an insult to his intelligence and humanity when he was told by his supervisor, Ms. Edeburn, not to talk about the terrorist attacks or listen to the radio or watch television. Mr. Meza also saw appellant enter Ms. Edeburn's office and later came out upset and left the office.

In a September 28, 2001 letter, Dr. Urbat indicated that appellant was very angry with the employing establishment and felt she was reassigned to a station 50 miles from her home because she called Ms. Edeburn's supervisor. In an October 9, 2001 letter, Dr. Urbat wrote that appellant said things were bad at work and she was very frustrated.

In an October 29, 2001 form report, Dr. Joyce Liegien, a psychiatrist, wrote that appellant was upset by the verbal aggressiveness/assault by her supervisor when ordering workers to ignore the events of September 11, 2001. She diagnosed appellant with recurrent major depression and checked "yes" in a box indicating that the condition was work related. In a November 25, 2001 note, Dr. Urbat wrote that appellant was totally disabled from work as she was very angry about how she was treated.

In a December 5, 2001 decision, the Office of Workers' Compensation Programs denied appellant's claim finding that her emotional condition did not arise in the performance of her federal duties.

Appellant requested a hearing that was held on August 27, 2002. At the hearing appellant repeated her earlier statements as to what happened. She also indicated that she filed an Equal Employment Opportunity claim but it was not yet resolved and that she felt stress while performing her duties as a safety officer, answering telephone calls from various postal stations asking how to respond to the news of the attacks. She further indicated that she felt the incident occurred because she called Ms. Edeburn's supervisor.

In an August 27, 2002 letter, Mr. Meza revised his earlier statement and added that he was aware that appellant called Ms. Edeburn's supervisor and Mr. Pelch spoke with Ms. Edeburn.

In an October 29, 2002 decision, the hearing representative modified and affirmed the December 5, 2001 decision, finding that appellant had alleged one employment factor, answering

telephone calls from various postal stations regarding the attacks. The hearing representative further found the medical evidence insufficient to meet appellant's burden of proof.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

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.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a future injury, fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions; specifically that in light of the September 11, 2001 attacks she feared working in a federal building, her supervisor told her not to talk about the attacks, that her supervisor asked if she was working while away from her work area, that her supervisor harassed her after she called an up-line supervisor and that she was upset by taking telephone calls related to the attacks.

By decision dated October 29, 2002, the hearing representative found that appellant established one compensable factor, answering telephone calls related to the attacks, but denied the claim finding that the medical evidence was insufficient to establish that the accepted factor was causally related to her medical condition. The Board must initially review whether appellant's other alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that she feared working in a federal building, the Board finds this is a fear of future injury. Regarding her allegation that the employing establishment unreasonably monitored her activities at work on September 11, 2001 and requested that all employees continue their work assignments, 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.⁴ Although the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁵ However, the Board has also found that an

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ 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).

⁵ *Id.*

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.⁶ However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. The statement from Mr. Meza only describes how he felt about his supervisor's request that he continue working and not be distracted by the news of the attacks and what he saw regarding the interaction between his supervisor and appellant. He did not write that he specifically heard what was said between the two parties. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. 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 his regular duties, these could constitute employment factors.⁷ 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.⁸ In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.⁹ Appellant alleged that her supervisor engaged in actions, such as staring at her, which she believed constituted harassment and discrimination, but she provided insufficient corroborating evidence to establish that the actions actually occurred.¹⁰ The statements by Mr. Meza, while supporting that appellant was told not to talk about the attacks, do not support appellant's allegations that she was stared at or retaliated against for calling Ms. Edeburn's supervisor. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Finally, regarding the factor of answering telephone calls on September 11, 2001 the Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.¹¹ In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines. In the present case, the hearing representative found that

⁶ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ 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).

¹⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹¹ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

appellant alleged a compensable factor, namely that she experienced stress when taking calls from stations regarding the attacks. The Board affirms the Office's finding that activity as being within the performance of appellant's duties.

Regarding appellant's claim that she was fearful of her safety because her supervisor stared at her and looked angry, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹² Appellant has not shown how a stare or angry look would rise to the level of abuse or otherwise fall within the coverage of the Act.¹³ For the foregoing reasons, appellant has established only one compensable employment factor under the Act.

However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁴

In the present case, appellant's medical evidence does not causally relate her emotional condition to the fact that she answered telephone calls related to the terrorist attacks. In her September 17, 2001 report Dr. Urbat attributed appellant's condition to the confrontation with her supervisor. In her September 28, 2001 report, Dr. Urbat attributed appellant's condition to what appellant described as retaliation by her supervisor for calling human resources. In her October 9, and November 25, 2001 reports Dr. Urbat attributed appellant's condition to her frustration and anger with the employing establishment. In her October 29, 2001 report, Dr. Liegien found that appellant's condition was a result of her supervisor's verbal aggressiveness. In summary, appellant has not submitted medical evidence that causally relates her medical condition to the one accepted factor of employment, answering telephone calls about the attacks. Therefore appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

¹² See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

¹³ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

¹⁴ See *William P. George*, 43 ECAB 1159, 1168 (1992).

The October 29, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member