

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TEARESA P. HYMAN and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 03-748; Submitted on the Record;
Issued June 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

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

On October 11, 2002 appellant, then a 43-year-old mailhandler, filed a traumatic injury claim alleging that she sustained mental stress and anxiety on the job when her supervisor, Willie Morris, belittled her and argued with her about her present job limitation and status. In the supervisor's section of the claim form, Mr. Morris stated that he was instructing appellant on her job assignment and she told him that she could not do the work because she had to sit down. He stated that she called the manager, Mr. Hibbler and left.

In a supplemental statement dated October 15, 2002, appellant stated that she was unsure whether Mr. Hibbler would honor her six-hour a day light-duty requirement and when she reported to work on October 10, 2002 Mr. Hibbler said he would let her know. Mr. Morris told her that she could not work "NMO," that he was tired of all "these people can't work" and she needed to work the loose mail belt. Appellant stated that she told Mr. Morris that she could do that work for one and a half hours but she could not do lots of continuous walking and was unsure what would happen to her present assignment. She stated that Mr. Morris "lost control," and started yelling at her and said "that all light duty people need to be on the street" and they "can't do no work." Appellant stated that Mr. Morris said he did not need her and was going to get her to move and told her they would see Mr. Hibbler at the end of the afternoon. Appellant stated that she subsequently saw Mr. Morris and he told her that she was going to leave, that she could not work for him and they were "all going back." Appellant stated that she became upset, started to cry and had to go home.

In a statement dated October 21, 2002, Mr. Morris stated that on October 10, 2002 appellant reported to the rewrap area to rewrap NMO's and he informed her that he was going to train her to work on the loose mail and trash belt. He stated that appellant told him that she could not do that and that she was already working on NMO's. Mr. Morris said he told appellant that she only had one container and after she finished that container, he needed her on the trash

belt. He said that appellant stated that she could not do the trash belt because she could only stand for one and a half hours. Mr. Morris stated that he informed appellant that there were chairs at the belt for her to sit down when she needed to sit. He stated that he then left to attend a supervisor's meeting.

In another statement, appellant explained that she had surgery on both knees in December 1999 and was on permanent light duty. She stated that she felt pain in her knees when she lifted and walked or stood for a long period and she avoided walking down stairs.

In a third statement, appellant stated that she had never been hospitalized for an emotional condition. She stated that her problem began on July 19, 2002 with Mr. Morris who "is very fussy" and made her feel "useless." She felt Mr. Hibbler was "no help." Appellant stated that Mr. Morris did not warn her in the rewrap cage and complained to Mr. Hibbler. She felt Mr. Morris made her exceed her physical limitations when he told her not to work NMO, which caused her stress.

By letter dated October 29, 2002, the Office of Workers' Compensation Programs requested that appellant provide additional information including any sources of stress she had outside the government, whether she agreed with Mr. Morris' statement regarding what happened on October 10, 2002 and a narrative report from a treating physician explaining how factors at work caused her emotional condition.

By decision dated December 9, 2002, the Office denied appellant's claim, stating that she did not meet the guidelines for establishing that she was injured in the performance of duty.

In a statement dated December 13, 2002, appellant's husband, who also worked at the employing establishment, stated that Mr. Morris "does a lot of fussing and hollering around the bulk" and a lot of coworkers were "too scared or too indifferent to give a statement on what they see or hear." He said Mr. Morris was "under post-traumatic stress." On October 10, 2002 appellant's husband stated that a messenger told him that appellant had been crying and that Mr. Morris had "been loud and argumental to her." Appellant's husband stated that, although they commute to work together, on that day his wife left him at work with no ride home. He said when he got home, appellant was nervous and upset and kept talking about Mr. Morris and her job.

In an undated statement, a witness, Jerome Rice, stated that appellant came home on October 10, 2002 talking about her job, especially Mr. Morris and she said that in a tone "unbecoming of a supervisor," Mr. Morris made jokes about her handicap and embarrassed her. Mr. Rice stated that appellant said that Mr. Hibbler told her that he would release appellant in two weeks because there was no light duty for her and that caused her to have low self-esteem and feel stress.

By decision dated January 15, 2003, the Office denied appellant's claim, stating that appellant did not establish that her condition occurred in the performance of duty for

compensation purposes.¹ The Office found that the evidence did not establish that the supervisor made inappropriate comments, or establish error or abuse by the employing establishment in an administrative matter.

The Board finds that appellant did not establish that she sustained an emotional condition in the performance of duty as alleged.

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 her 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 reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁴ The issue is not whether the claimant has established harassment or discrimination under standards applied the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁵ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁶

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, for harassment to

¹ The Office noted that, prior to the issuance of the December 9, 2002 decision, appellant had asked for an extension of time for the submission of additional evidence and the Office gave appellant an extension until December 20, 2002. The Office stated that, since the claim was denied prematurely, it was being reviewed again to determine if the evidence supported the claim for an emotional condition.

² 5 U.S.C. §§ 8101-8193.

³ *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁵ See *Martha L. Cook*, 47 ECAB 226, 231 (1995).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁷ *Clara T. Norga*, *supra* note 3 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁸

In this case, appellant did not present any evidence to corroborate her contentions that on October 10, 2002 Mr. Morris assigned her work which exceeded her physical limitations; and that he yelled at, belittled or embarrassed her and made her feel helpless. In his statement dated October 21, 2002, Mr. Morris stated that he instructed appellant to work on the loose mail and trash belt and when she stated that she could not do the work because she could only stand for one and a half hours, he told her she could sit to do it. Appellant's husband was not a witness to the event of October 10, 2002 but witnessed appellant crying at home. The other witness statement from Mr. Rice, who did not describe his connection with appellant, was also not present during the incident. Mr. Rice did state that Mr. Hibbler told appellant that he was going to release her because there was no light-duty work, but there is no evidence of record that supports Mr. Rice's statement. Due to the lack of evidence corroborating appellant's allegation, appellant has failed to establish a compensable factor of employment.⁹

The January 15, 2003 and December 9, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

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

⁹ *See Robert W. Johns*, 51 ECAB 137, 143-44 (1999); *Ernest J. Malagrida*, 51 ECAB 287, 290 (2000). Since appellant did not establish a compensable factor of employment, the medical evidence need not be addressed. *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).