

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLIE L. KERR and U.S. POSTAL SERVICE,
POST OFFICE, Orem, UT

*Docket No. 03-982; 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On March 8, 2001 appellant, then a 44-year-old letter carrier, filed a notice of occupational disease alleging that she endured pain and despair due to a partial disability stemming from an accepted back injury on February 8, 2000. Appellant also stated that she had been harassed, abused, falsely accused of hiding mail during an inspection and erroneously disciplined in order to start termination proceedings. She alleged that these factors caused her paranoia, depression, emotional instability and suicidal ideation. Appellant accepted a permanent rehabilitation job offer as a city carrier on March 6, 2001. Her job duties included answering the telephone, sales associate, lobby director, close-out clerk and "nixie mail." Appellant's attending physician, Dr. Brent Bowen, Board-certified in physical medicine and rehabilitation, concurred with appellant's acceptance of the position with some additional restrictions.

By letter dated March 29, 2001, the Office of Workers' Compensation Programs requested that appellant submit additional evidence to perfect her claim.

Appellant submitted an April 19, 2001 report from Dr. Kevin D. Lambert containing diagnoses and history of her condition. Dr. Lambert stated that he began treating appellant in February 1998 when he diagnosed her with intermittent explosive disorder and placed her on medication because she had "episodes of outrage" against people that caused her distress. In July 1998, appellant told Dr. Lambert that her medication was "making her crazy" and he diagnosed her with obsessive compulsive disorder and treatment resistant depression and put her on a different medication. In 2001 appellant told Dr. Lambert that she was having "tremendous emotional stress at work" and that "they were trying to fire her." Dr. Lambert also

opined that appellant was not a threat for violence in the workplace. He discussed some specific events at appellant's work noting:

“Her report that she was forced to case mail within six weeks after a back injury. Casing mail includes twisting and turning which markedly aggravated her back condition. She states she was placed in solitary confinement at work and that her boss yelled at her when she went asking for some work to do. She reports she was placed in a ‘filthy pig sty office’ to do her work and that she cleaned this up. Another employee then wanted her position and proceeded to move in and take over this position with her boss’s consent and approval. She reports that they had an inspection in their office. Someone hid mail from the inspectors and she was accused of this, which she denies. She reported that she was subject to a police-like interrogation from her superior where she was yelled at and was not allowed to return to work but was forced to go home. There were further episodes one including where a TENS [transcutaneous electrical nerve stimulator] unit, which she was using for her back, was repeatedly unplugged while she was out. The unit required charging overnight and she used it specifically at work to try and help manage her back pain, which previously had been aggravated by the return too early to casing mail and further simply bizarre incidents.”

Appellant submitted copies of entries from a handwritten “diary” of daily events at work. In her diary she noted four specific events, which she alleged contributed to her emotional condition. First, she alleged that a coworker, Tracy Jacobson, made inappropriate comments to her about another employee, stating that they “should check Shauna’s knees when she gets back” [from the doctor’s office] because “they [will] be black from sucking her doctor or something.” Next, appellant alleged that a coworker, Art Woodbury, “flipped her off.” Further, she alleged that coworker Ken Hughes, with whom she had had an affair, said to her: “Let [u]s get naked on the couch so your boys can come in and see what a sex goddess their mother is.” Last, appellant alleged that a male employee walked by her on purpose and “passed gas.”

The employing establishment submitted statements controverting appellant’s allegations from the postal manager, her supervisor and three employees. Appellant’s coworker Ms. Jacobson stated that she did not make a sexual comment to appellant about another employee, coworker Mr. Woodbury stated that he did not recall “flipping off” appellant and coworker Mr. Hughes stated that he had no recollection of making sexual statements to appellant, which she recorded in her diary on January 4, 2001.

By decision dated April 24, 2002, the Office denied appellant’s claim for compensation benefits on the grounds that the claimed factors of employment were not in the performance of duty.

Appellant disagreed with the Office’s decision and requested an oral hearing. At the hearing held on September 25, 2002, appellant’s representative alleged that appellant worked outside her restrictions from February 14 to March 28, 2000. In support, appellant submitted a statement from a coworker Barry Green stating that appellant worked “Route 9702” from February 14 to March 28, 2000. Appellant’s representative also discussed the alleged events that occurred with appellant’s coworkers that aggravated her emotional condition.

By decision dated December 23, 2002, the Office hearing representative affirmed the April 24, 2002 decision on the grounds that appellant did not establish a compensable factor of employment.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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 factors of her federal employment. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.³ Therefore, the initial question presented in this case is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁴ The Board has reviewed the case record and finds that appellant has not provided the necessary evidence to establish a compensable factor of employment.

Appellant submitted pages from her "diary" describing daily events at the employing establishment, which allegedly contributed to or aggravated her emotional condition, however, most of these incidents did not involve her regular or specially assigned work duties but

¹ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

² *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *See Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.

⁴ *Donald E. Ewals*, 45 ECAB 111 (1993).

concerned the perceived treatment she allegedly received from coworkers and supervisors. The Board's case law illustrates that, in the context of disputes or difficult relationships alleged between coworkers, mere perceptions or generally stated assertions of dissatisfaction with coemployees will not support a claim for an emotional disability.⁵ In *Kathleen D. Walker*,⁶ the employee attributed her emotional disability, in part, to disputes with coworkers. The Board noted that, while established disputes arising from the performance of one's duties could give rise to coverage under the Act, appellant's unfounded perceptions could not constitute a compensable factor of employment. In *Lillie M. Hood*,⁷ the Board found that actions by coworkers or supervisors that are considered offensive or harassing by a claimant may constitute compensable factors of employment to the extent that the implicated disputes and incidents are established as arising in and out of the performance of duty; however, mere perceptions or feelings of harassment, however, are not compensable. To discharge her burden of proof, appellant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.⁸ In this case, appellant failed to provide the necessary probative and reliable evidence to support her allegations of harassment and abuse.

Appellant generally alleged on her occupational disease claim (Form CA-2) that she had been harassed, abused, falsely accused of hiding mail, and erroneously disciplined in order to start termination proceedings. These allegations, however, are not specific and are not dated. In *Mary Margaret Grant*,⁹ the Board found that general allegations of abuse without specific evidence to support the claim were insufficient to substantiate a compensable factor of employment.¹⁰ The Board also finds in this case that appellant's allegations of abuse and harassment are not supported by specific evidence.

Appellant did allege that several of her coworkers made offensive comments and gestures towards her that aggravated her condition, including her female coworker who allegedly made sexual comments about another employee, a male coworker who allegedly made sexual comments involving himself and appellant, and two other male coworkers who made inappropriate gestures and noises towards appellant. Appellant, however, did not submit any independent and corroborating evidence, such as witness statements, to substantiate that these incidents by her coworkers did in fact occur. In fact, the record contains a number of affidavits in which these coworkers stated that the alleged statements were never made. Appellant's supervisor and manager also submitted statements indicating that appellant's problems at work

⁵ *Alfred Arts*, 45 ECAB 530 (1994).

⁶ *Kathleen D. Walker*, *supra* note 1.

⁷ 48 ECAB 157 (1996).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ *Mary Margaret Grant*, 48 ECAB 696 (1997).

¹⁰ *See also James W. Griffin*, 45 ECAB 774 (1994).

were a result of her own explosive behavior. The remainder of appellant's allegations of harassment or inappropriate behavior in her diary are not specific and are also unsubstantiated.

Appellant also alleged that she worked outside her restrictions from February 14 to March 28, 2000 and that this contributed to her emotional condition, yet she did not submit any probative evidence to support this allegation. When appellant returned to work on March 6, 2001 after her back injury, her job duties included answering the telephone, working as a sales associate, a lobby director and a close-out clerk and doing "nixie mail." Appellant's attending physician concurred with the job offer with one additional restriction regarding her standing and walking. Appellant did not submit any evidence, such as a witness statement or a recent job description, to show that she was working outside the boundaries of her permanent rehabilitation job offer during the period in question. She only submitted a statement from her coworker, who indicated that appellant had worked "Route 9702" from February 14 to March 28, 2000, but without any further explanation, this statement has little meaning and is of little probative value. Appellant recorded statements in her diary that she was working outside her job restrictions, however, without supporting evidence to substantiate these allegations her personal statements are also of little probative value.

As appellant has not submitted the necessary factual evidence to establish that her allegations of harassment and abuse are compensable under the Act, she has not met her burden of proof in this case and the Office properly denied her claim.¹¹

The decisions of the Office of Workers' Compensation Programs dated December 23 and April 24, 2002 are hereby affirmed.

Dated, Washington, DC
June 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki, supra* note 3.