

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAUREEN GREEN and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 02-1273; Submitted on the Record;
Issued March 10, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On August 1, 2001 appellant, then a 35-year-old distribution clerk, filed a claim alleging that on October 18, 2000 she developed severe depression and post-traumatic stress disorder which she attributed to mental abuse by her supervisor, Truman Buzzell. She stopped work on June 25, 2001 and did not return. The employing establishment controverted appellant's claim.

By letter dated August 15, 2001, the Office of Workers' Compensation Programs requested that appellant describe, in detail, the employment-related incidents or conditions which she believed caused her condition.

Appellant submitted a July 17, 2001 report from Dr. Craig A. Warnick, a Board-certified family practitioner, who diagnosed moderate-to-severe agitated depression and indicated that she was to be out of work for an indefinite time.

Mr. Buzzell, appellant's supervisor, provided an August 17, 2001 statement in which he denied her allegations of mental abuse. He stated that appellant was on light duty due to a previous nonwork-related back injury and that she had fewer duties than her coworkers and had no conflicts of which he was aware.

Appellant provided an August 25, 2001 statement in which she claimed that Mr. Buzzell wore too much cologne, that he made a remark about a T-shirt she wore and gave her a direct order to remove it,¹ that he threatened to give her a letter of warning about her attendance, that he stood behind her case and stared at her, and that she had no outside stressors.

¹ It said, "bite me!" in bold letters.

Appellant provided a December 2, 2001 statement from John Principe, a union vice-president, who addressed appellant's allegations. He indicated that appellant claimed that on March 22, 2000 she overheard Mr. Buzzell stating "[d]o [not] listen to [appellant] she [is] just a woman." That on May 2, 2000 Mr. Buzzell stood directly behind appellant and stared at her; that on May 4, 2000 Mr. Buzzell again stood behind her with an eerie stare, that on May 6, 2000 he glared at her while she was working; that on May 9, 2000 Mr. Buzzell winked at her in a condescending way; and that after a break she followed normal procedures and went to the registry, but was yelled at by Mr. Buzzell. Appellant alleged that Mr. Buzzell was out of control, that he did not know how to back off and that he constantly harassed, intimidated, threatened, humiliated and played mind games with his employees.

By report dated September 26, 2001, Dr. Warnick opined that appellant had reactive agitated depression relation to work stress. He indicated that she related Mr. Buzzell as the primary source of her problems in general terms of overall mental abuse, but that she was not overly specific, claiming that she was being treated with significant disrespect. Dr. Warnick indicated that appellant had a psychological "meltdown" on June 25, 2001.

In support of her claim, appellant submitted multiple statements from coworkers; including Sandra Lasher, Karen Giampaolo, Christine Tompkins, Michelle Allen, Larry Dozier, Joanne Gramazio, David E. White, Kevin Kelly and John D. Hahn. The employees provided their opinions of Mr. Buzzell and his supervisory style and recounted incidents with Mr. Buzzell in which they were involved. The statements did not address the specifics of any of the incidents alleged by appellant or other situations involving appellant. Ms. Tompkins stated: "I witnessed the abuse that Buzzy and Shelia gave to [appellant] on a nightly basis," but she did not provide any specific details as to time, place, circumstance or actions involved.

By decision dated March 11, 2002, the Office rejected appellant's emotional condition claim finding that she failed to provide sufficient evidence to establish her claim. The Office found that appellant had not submitted sufficient evidence to establish any of the incidents that she claimed as occurring as alleged.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.²

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

to her condition; (2) rationalized 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.³ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁴

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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁵ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁶ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁷

When working conditions are alleged as factors in causing 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.⁸ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Id.*

⁵ *Donna Faye Cardwell*, *supra* note 3; see also *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Id.*

⁷ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁸ See *Barbara Bush*, 38 ECAB 710 (1987).

evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹⁰ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.¹¹

Appellant has not alleged that she developed an emotional condition arising out of her regular or specially assigned duties or out of specific requirements imposed by her employment. She alleged, for the most part, that her condition was caused by supervisory harassment, intimidation, humiliation and mental abuse. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment, may constitute a factor of employment giving rise to coverage under the Act.¹² However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹³ In this case, appellant submitted statements from coworkers which addressed their interactions with Mr. Buzzell, but none of these statements specifically addressed the allegations raised by appellant. None of these statements documented Mr. Buzzell's behavior with regard to appellant or substantiate her allegations of incidents alleged in this case. The Board, therefore, finds that appellant has failed to establish her allegations with specific, reliable, probative and substantial evidence.

Appellant has the burden of establishing a factual basis for her allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

As appellant has not submitted any other factual evidence which corroborates her allegations of supervisory harassment and abuse, she has failed to establish a factual basis for her claim.

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹¹ *See Donna Faye Cardwell*, *supra* note 3; *see also Lillian Cutler*, *supra* note 5.

¹² *Sylvester Blaze*, 42 ECAB 654 (1991).

¹³ *Ruthie M. Evans*, *supra* note 9.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 11, 2002 is hereby affirmed.

Dated, Washington, DC
March 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member