U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DOLORES L. BAILEY and U.S. POSTAL SERVICES,
POST OFFICE, Dallas, TX

*Docket No. 02-1932; Submitted on the Record;*
*Issued March 25, 2003*

---

DECISION and ORDER

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

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

On June 12, 2001 appellant, then a 48-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (CA-2), alleging that her work caused stress, depression and anxiety. She attributed her condition to hostility from coworkers and management. At the time appellant filed her claim, she was performing a light-duty modified position as a result of previous work-related injuries.[1]

In a November 5, 2001 letter, the Office requested more specific information from appellant. In a November 28, 2001 letter she responded by writing that it seemed management and other employees had a problem with her working a light-duty job. Appellant alleged that her supervisor, Travis Durham sent Cheryl Hills to move her out of her assignment.

Appellant wrote that supervisor, Ruth Howard told her that management was watching her and there were meetings between management and the union regarding her job. She received a telephone call from Glen Cook regarding an investigation as to how she had acquired a job outside her bid assignment.

Appellant alleged that on several occasions the door to her worksite was blocked by large mail containers and, due to her medical restrictions, she had to request assistance to clear the pathway before she could return to work. On other occasions the access to the work area would be blocked by heavy equipment. According to appellant, these occurrences were done deliberately and made her feel both unsafe and inferior. She alleged that the clerks in the registry section, who had a problem with her working in the area to which she was assigned, threatened

[1] On July 20, 1993 the Office accepted appellant's claim for right carpal tunnel syndrome. On June 27, 1996 the Office accepted appellant's claim for an aggravation of a cervical disc. Both incidents were under Claim No. 160222671.

to call postal inspectors if anything was missing in their work areas. Appellant requested leave without pay and later found out she was placed on absent without leave status and received a letter from the employing establishment threatening to fire her.

Appellant alleged that she was released for work on June 4, 2001, after an extended leave of absence, but was not able to resume work due to administrative errors and omissions by the employing establishment, including the requirement that she have a medical clearance to return to work. When she attempted to get a timecard from her supervisor, Mr. Durham, she discerned hatred and hostility, which appellant attributed to her race and disability. She requested her worksite be moved from the AirMail Center (AMC) to the AMC Annex because she did not feel safe working in the AMC. When appellant arrived in the Annex, the space was so crowded that she was assigned to work in the break area. A coworker named Rose told her that other employees were going to file grievances because she was working there.

After the September 11, 2001 attacks, appellant was instructed to go back to the AMC to work security in the parking lot. She did not feel qualified to work there and said that she was not relieved for her breaks and lunches as other employees were. Appellant alleged that on November 6, 2001 security guard Roosevelt was emotional, irate and he raised his voice at her because she failed to report a car parked in the lot for 30 minutes. He threatened to have a meeting with a Mr. Inglett, a supervisor, about the light-duty people. Appellant alleged that Mr. Roosevelt had a problem with both her disability and the disabilities of other employees.

On May 12, 2000 appellant requested leave without pay because of the stress at work and her fear of being reinjured. Even though she stayed in contact with supervisor Whitlock during her leave, she was placed on absent without leave when she returned. On April 26, 2000 appellant overheard an argument between a supervisor, Joe Carter, and another employee. On April 27, 2000 appellant learned that Mr. Durham was threatening to put her back in her old job and he would make it very stressful for her.

In January 1999, MDO, Benjamin Vidal from Miami informed appellant that he could have her relieved of her duties because she could not verify mail listed on her AV-7 forms. According to appellant she was not able to do this because of her disability. On February 16, 1999 supervisor, Ruth Howard told appellant that she was being watched, her name came up in a meeting between management and the union and other employees were saying that she was not doing her job. On March 2, 1999 Tony Hanks asked appellant for her workers' compensation documents. She indicated that this made her feel oppressed due to her disability. On March 5, 1999 Mr. Cook called her and said he was doing a union investigation regarding how she received her job, when other good union workers could do her job. Appellant refused to answer his questions. On March 11, 2000 she saw her immediate supervisor, Mr. Durham, glaring at her and trying to intimidate her. Appellant discerned hatred and malice from him and caused her to feel stalked. Later that morning a mail pouch was thrown and landed near her, creating an unsafe situation. On March 30, 2000 appellant was given a discussion about her tardiness, by supervisor Ms. McGee, on the workroom floor that she alleged was humiliating and embarrassing.

Appellant submitted statements from several coemployees in support of her claim. In a May 12, 2000 statement, John G. Morales, a clerk, who worked with appellant indicated, that

their work area was sometimes filled with equipment and mail pouches. He stated: "[W]e have been subject to threatening remarks from some of the [other employees] working in the registry room." In a December 1, 2001 statement, Mr. Morales stated that he observed appellant in various conversations with her supervisors, but was never within reach of what was said. He indicated that appellant became upset when her leave without pay was denied. In an undated statement Wallace Clark, a coworker, indicated that appellant's work area was blocked by mail pouches.

In a September 24, 2001 statement, R.H. Chovenec, an acting safety captain, stated that there was an "excitedly amount of pressure" by their supervisor. In a December 4, 2001 statement, Chaplain Johnny Perez, wrote that appellant was distraught and felt management treated her unfairly. He related that she was extremely fearful of losing her job. In an October 30, 1999 statement, Brian Humphrey said that on October 21, 1999 he had a confrontation with a coworker and that it was his understanding that the same coworker "was abusive and intimidating" to appellant.

In an April 11, 2002 letter, supervisor Ms. McGee wrote that appellant worked in the registry room and at times mail and equipment would be near the door, but not totally blocking the doorway. Ms. McGee said that she instructed employees not to stage mail near the door and after she did not hear any more complaints. Appellant was placed on absent without leave because documentation stated that she was to return to work on July 12, 2000 but appellant did not return. Ms. McGee discussed appellant's attendance on the floor because that was where her desk was located. She noted no other employees were in the area at the time of the discussion.

On April 10, 2002 Grady Nolen, the AMC safety coordinator, indicated that he was not aware of any hostility or aggressiveness toward appellant. He said she never filed a grievance or an Equal Employment Opportunity complaint or other report of harassment. Appellant, as a light-duty employee, was given work in other areas when they had no work in their areas. Mr. Nolen said it was standard union practice to investigate when employees were not working in their job bid areas. He acknowledged that occasionally the door to her work area would be blocked because they worked in very confined space, but someone always moved the material as soon as possible. Appellant was placed in absent without leave status because she did not return to work, on the day the documentation indicated she would. Mr. Nolen said all employees were asked to get medical clearance after being off work for several days and that it was routine for the union to investigate when an employee worked out of their bid job. He indicated that supervisor Mr. Hanks was responsible for attendance control and checked sick leave documentation. Mr. Nolen indicated that it was Mr. Durham's job as a supervisor to observe all employees work areas. Mr. Nolen noted that Mr. Vidal did not threaten to remove appellant and that her perceptions of stalking and harassment by other employees were not substantiated.

In an April 24, 2002 decision, the Office denied appellant's claim, finding that none of appellant's allegations were compensable factors of employment. The Office accepted as factual, but not compensable, that appellant was placed in absent without leave status, that she was required to report to the medical unit after a year's absence from work, that Glenn Cook called appellant as part of a standard union investigation of employees working outside of their bid assignment, that Ms. McGee talked to appellant about her tardiness on the work floor, that Mr. Durham raised his voice to another employee, that appellant was reassigned to the AMC

Annex, that appellant was released to work on June 4, 2001, but had administrative difficulty with her timecard and that she received counseling from Renee Lorenzo. The Office found appellant's other allegations as not factually established; including that she was harassed by management, coworkers or the union, that mail pouches and equipment were intentionally placed near her doorway to harass her, that she was denied sufficient space in which to work safely; that she was not asked to work beyond her medical restrictions, that Mr. Durham did not stalk or glare at her or that the medical unit did not handle her paper work properly.

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

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[4] 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.[5]

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.[6] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

[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] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[5] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[6] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[7]

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave, improperly assigned work duties and unreasonably monitored her activities at work, 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.[8] Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and 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.[9] The Board has also held, however, that an administrative or personnel matter may be considered 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.[10] Appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters.

Regarding appellant's absent without leave work status, later changed to leave without pay, the mere fact that personnel actions are later modified or rescinded, does not in and of itself, establish error or abuse.[11]

Appellant has also alleged that harassment and discrimination on the part of her supervisors and coworkers 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 her regular duties, these could constitute employment factors.[12] 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.[13] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and she has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or

[7] *Id.*

[8] *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).

[9] *Id.*

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

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

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

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

coworkers.[14] John Morales alleged that appellant and other employees were subject to threatening remarks by coworkers, but he did not provide specifics of what remarks were made when they were made, by whom or how they were made. He noted observing appellant in conversations with supervisors and acknowledged that he did not hear what was said. Mr. Clark indicated that appellant's doorway was blocked. His statement does not establish that blockage was deliberate or in harassment. Brian Humphrey's statement, discussed a confrontation not involving appellant and not specific as to any "abusive or intimidating" action taken against her. Mr. Perez's comment that appellant was fearful of loosing her job is also vague.

The statements are insufficient to substantiate appellant's allegations of harassment or discrimination because they are general in nature and not specific as to the allegations made in this case. The evidence in the form of witness statements were not sufficiently specific to establish that the statements actually were made or that the alleged actions actually occurred.[15] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's allegation that she developed stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.[16]

The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment, as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.[17] The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[18] Regarding appellant's claim of crowded work space, the Board has held that an employee's dissatisfaction with working in an environment which is considered to be tedious, monotonous, boring or otherwise undesirable constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[19] The Board notes that appellant's reaction to such conditions and incidents at work is considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.[20]

---

[14] *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).

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

[16] *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

[17] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[18] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[19] *See David M. Furey*, 44 ECAB 302, 305-06 (1992).

[20] *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

Regarding appellant's assignment, watching cars in the parking lot without prior training, the Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter. This is not compensable under the Act unless the refusal constitutes error or abuse.[21] The evidence does not establish error or abuse in this case.

Regarding the union and/or management investigating whether appellant worked outside her bid area, the Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.[22] 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.[23] Although appellant alleged that the employing establishment acted abusively in conducting its investigation, she has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of her position were unreasonable. Appellant alleged that her supervisors, Mr. Durham and Mr. Cook, made abusive statements during the course of the investigation of her position, but she provided insufficient evidence to establish that the statements were actually made.[24] The witness statements of record are vague and general in nature. Thus, appellant has not established a compensable employment factor under the Act in this respect.

The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if such activity was substantiated by the record.[25]

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.[26] As discussed above the statement by Mr. Morales tending to support the allegation of threats was too vague.

Regarding appellant's allegations that she overheard raised voices in the workplace, the Board has recognized the compensability of verbal altercations or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act, especially when the raised voice was not directed at appellant.[27]

---

[21] *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

[22] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

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

[24] *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

[25] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

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

[27] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

Appellant has not shown how raised voices in the workplace would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[28]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that he sustained an emotional condition in the performance of duty.[29]

The April 24, 2002 decision of the Office of Workers' Compensation is hereby affirmed.

Dated, Washington, DC
March 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[28] *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).

[29] 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).