U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA A. KALUAHINE and U.S. POSTAL SERVICE,
POST OFFICE, Santa Rosa, CA

Docket No. 02-2203; Submitted on the Record;
Issued March 12, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
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 April 13, 2001 appellant, then a 41-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging stress due to various incidents and conditions at work.

In support of her claim, appellant provided a written statement detailing the events to which she attributed her stress. She indicated that, since 1999, she was required to provide excessive medical documentation in support of her family medical leave requests; she was consistently denied leave in a timely fashion based on claims of documentation pending; she was the object of verbal accusations and personal attacks on her character; her employing establishment caused friction between her and her physician by requiring excessive documentation; and that an incident concerning the discussion of carbon monoxide poisoning was a deliberate effort to cause her emotional distress.

Appellant submitted numerous reports from Dr. Kari K. Teran, a Board-certified family practitioner and several fitness-for-duty certificates.

By letter dated May 29, 2001, the employing establishment controverted the claim. Appellant's supervisor, Jean Downing, denied that appellant was subjected to stress at work, that she treated her in a negative and unprofessional manner on a consistent basis or was unreasonable in her expectations of her. Ms. Downing indicated that she was aware that appellant's son committed suicide and that, prior to this occurrence, appellant was having a lot of medical appointments for her own illness. She stated that she became appellant's supervisor in September 1999. During that time, Ms Downing indicated that they had a required safety stand-up on carbon monoxide poisoning. As part of the stand-up, she stated that she used the analogy that people have committed suicide by carbon monoxide poisoning by having a car engine run

and was not aware at that time, that appellant's son had committed suicide in exactly that way. Ms. Downing stated that, if she had known, she would never have mentioned it and probably would have scheduled it on appellant's day off. She noticed appellant's attitude and when she discovered that appellant's son had committed suicide she stated that she immediately set up a meeting to clear up the misunderstanding. Ms. Downing indicated that it was apparent that appellant did not believe her and instead became very bitter and hostile towards her. She stated that she made repeated attempts to clear the matter but appellant continued to believe that her actions were intentional. Ms. Downing stated that she had always attempted to speak to appellant with fairness and equity. She addressed the issue regarding filling out the 3971 requests properly and timely and stated that appellant was asked for information necessary to support her claims requiring medical documentation to support her request for family medical leave and noted that, if the information had been provided in the first place, she would never have to approach appellant to request the information. Ms. Downing added that she was also controverting the claim because two days prior to appellant turning in this claim she was "mandatoried" to work this past holiday weekend by supervisor, Merrie Dickinson, which resulted in an altercation between the two of them. Further, Ms. Downing stated that she was scheduled by her station manager to do a route count on route 125 the day before she turned in the claim and her best friend was on that route and has brought undue attention upon herself because of poor performance and appellant would become verbal or show that she was upset whenever attention was brought upon Sheri Russ.

By letter dated June 12, 2001, appellant responded and stated that her supervisor was unreasonable in the manner in which she dealt with her by using sarcasm, mistrust and antagonism and personal attacks. Appellant indicated that her supervisor changed the reporting requirements to meet her needs and that her supervisor's allegation that she was unsure of the reasons for her medical appointments prior to her son's death was incorrect as appellant had personal conversations with Ms. Downing regarding the reasons. Further, appellant alleged that her supervisor made offensive comments regarding carbon monoxide poisoning in light of her son's suicide and discussed private matters in front of others. Appellant also denied having an altercation with her supervisor or Ms. Dickinson and stated that she had to defend herself on a daily basis against harassment from untruths.

In a July 2, 2001 statement, Ms. Dickinson denied that there was an altercation with appellant or that she was counseled or disciplined for unprofessional conduct.

In a June 23, 2001 joint cooperation process form, supervisors Pope and Ms. Downing agreed that they were unprofessional in using personal information about two carriers in support of their controversion letter involving appellant. They agreed to write a letter of correction to the Department of Labor, informing them of improper misuse of unfounded personal information about two carriers, Tom Figl and Sherri Russ, in her CA-2 response concerning appellant and they agreed to provide a letter to both carriers with the written apology. A copy of the apology was attached.

In a July 13, 2001 letter, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish her claim and requested that she submit such. She was allotted 30 days to submit the requested evidence.

In a November 29, 2001 decision, the Office found that the evidence was insufficient to establish that appellant sustained an injury in the performance of duty.

By letter dated December 18, 2001, appellant requested a hearing, which was held on May 25, 2002.[1]

In a June 6, 2002 statement, Ms. Downing, the customer service supervisor, indicated that she believed appellant's injury was not the specific result of a work-related accident and indicated that appellant had nonwork-related medical problems and issues involving both her son and her daughter. She indicated that she had not seen any factual medical evidence and noted that the doctor's note was nonspecific as it merely indicated work-related stress with no detail. Ms. Downing denied any malice or hostility and indicated that she had apologized for her communications failings. She indicated that two of appellant's best friends were witnesses and indicated that she did not believe the testimony was credible. Ms. Downing confirmed that she approached them and any other employee not on an overtime list, as early as possible to let them know her initial plan for whether or not they would receive assistance. She indicated that appellant was immediately defensive and threatening when given instructions and insubordinate and belligerent most of the time towards her. Ms. Downing addressed the carbon monoxide incident and indicated that she would never intentionally do anything to hurt someone. She also stated that she witnessed Ms. Dickinson and appellant exchange heated words over appellant being mandatoried to work the Memorial Day holiday last year. Further, Ms. Downing confirmed that she made the mistake of calling appellant's doctor's office to inform them of our limited-duty policy and was informed not to do so. She referred to an incident involving reading the M-41 off the floor, noting that appellant refused to follow the instructions. Further Ms. Downing confirmed that appellant was asked to update her medical information on a regular basis as all employees are with any restrictions.

In a June 17, 2002 report, Moss Henry, M.A., indicated that appellant was experiencing high blood pressure, a preulcerous stomach condition and back pain. He indicated that appellant cited a hostile environment at the employing establishment and she reported experiencing a great deal of stress because of harassment by Tony Chaney and her supervisor, Ms. Downing. Mr. Henry indicated that the somatic complaints and emotional distress she reported were constant with stress-related conditions.

In a June 23, 2002 statement, appellant indicated that she had never received a letter of warning and the only medical problem she had that was unrelated to work was a hyperactive thyroid. She explained that her children went to Employees Assistance Program with respect to the loss of their brother. Appellant denied that the witnesses' statements were not credible and indicated that Ms. Downing had a personal anger against her. Further, she denied being insubordinate and being problematic.

[1] During the hearing, appellant added to her allegations and testified that her supervisor intentionally made her wait in pain, when she injured her ankle.

In a July 17, 2002 decision, the Office hearing representative denied the claim because appellant did not meet her burden of proof that she sustained an emotional condition in the performance of duty.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every 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 or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specifically 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]

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

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[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 126 (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).

[7] *Id.*

Appellant stated that Ms. Downing, a supervisor, deliberately caused her emotional distress by describing the effects of carbon monoxide poisoning knowing full well that her son had recently committed suicide in that manner. She also indicated that Ms. Downing deliberately made her wait for an ambulance causing her to suffer. Although appellant's employer may have been insensitive to the situation concerning her son's death or it appeared that she made her wait on purpose, there is no objective evidence in the record that the employing establishment erred or acted abusively in the administration of its personnel policies.[8] To the extent that disputes and incidents alleged as constituting harassment and discrimination by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[9] 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.[10] In the instant case, appellant's supervisor denied appellant's accusations or that she tried to cause her emotional distress. Further, she indicated that she would have conducted the seminar on carbon monoxide on a day when appellant was off duty if she had known about the tragedy beforehand. Appellant has not provided sufficient evidence to meet her burden of proof.

Appellant also related that her supervisors behaved toward her in a hostile and abusive manner as she was the object of verbal accusations and attacks on her character. Specifically, she indicated that her supervisor was unreasonable in the manner in which she dealt with appellant by using sarcasm, mistrust and antagonism and personal attacks. In this case, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by any of her supervisors or coworkers.[11] She did not submit any statements from coworkers or supervisors with specific information that would support her allegations. Thus, appellant's statement is insufficient to meet appellant's burden of proof.

She also described difficulty in matters regarding sick and annual leave indicating that she was required to provide excessive medical documentation in support of her family medical leave requests and consistently denied leave in a timely fashion. The Board has repeatedly held that procedures regarding leave usage, pertain to personnel functions of the employer, rather than to duties of the employee[12] and are not compensable unless appellant establishes that the employing establishment erred or acted abusively in carrying out its administrative functions.[13] In this case, there is insufficient evidence that the employing establishment erred or acted

[8] *Lillian Cutler*, 28 ECAB 125 (1976).

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

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

[11] *See Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a appellant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[12] *Joseph C. DeDonato*, 39 ECAB 1260 (1988).

[13] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 0(1991).

abusively in its handling of these administrative and personnel matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant also alleged that the employing establishment caused friction between her and her treating physician by requiring excessive documentation. The denial of leave time or the demand for supporting documentation of requested leave are matters of supervisory discretion. Further, appellant's relationship with her physician is personal and the friction that she alleged would not be related to her job duties or requirements and thus is not compensable.[14]

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 she sustained an emotional condition in the performance of duty.[15]

The July 17, 2002 decision of the Office of Workers' Compensation is hereby affirmed.

Dated, Washington, DC
March 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *Grace A. Richardson*, 42 ECAB 850, 853 (1991).

[15] 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, 502-503 (1992).