

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN MALONE and U.S. POSTAL SERVICE,
DULLES GENERAL MAIL FACILITY, Dulles, VA

*Docket No. 03-68; Submitted on the Record;
Issued March 10, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

On September 2, 1999 appellant, then a 55-year-old records clerk, filed an occupational disease claim alleging that on or before June 1991 she developed an emotional condition in the performance of her duties, claiming that for nine years she was treated with alienation, anger and jealousy. She submitted a 14-page statement outlining her allegations of harassment and discrimination at work. Appellant alleged that: (1) she was intimidated, her character was assassinated and her personality and work was criticized; (2) she immediately felt uncomfortable and unwanted; (3) her coworkers blocked her way in training and applying for other jobs; (4) her supervisor Nancy Goldhardt purposefully did not sign an application she submitted for a position at the headquarters of the Inspection Office; (5) she was given work and then told to do it the wrong way; (6) she overheard other employees on the telephone talking about her; (7) Ted Togan, a coworker, stalked her; (8) her coworker Leo McDaniel used her signature from a handwritten note to forge her name and file a "judgment" against her coworker Bonnie Weatherman for racial remarks.

Appellant's employing establishment controverted the claim and alleged that appellant's problems were personal in nature. Ms. Weatherman, a supervisor indicated that appellant was a senior employee at the agency and would have been able to apply for almost any position that was posted. Ms. Weatherman stated that appellant could have done this without taking a downgrade, but that she did not bid for another assignment. She claimed that appellant's own behavior created problems and stress in her working relationships. Ms. Weatherman stated: (1) appellant did not get along with her coworker Betty Brown and would not talk to her or work beside her; (2) she telephoned Rebecca Ramey another employee from home to tell her that she had spit on the cake that she had brought into the office. When asked about the incident appellant said that "she was only kidding"; (3) whenever there was food or cake for a special occasion appellant would ask for a schedule change or for annual leave or sick leave and would refuse to participate. Ms. Weatherman stated that she saw no evidence of any other employees

disrespecting appellant or leaving her out of activities. She noted that employees from the employing establishment gave appellant rides to work when she did not have a car and were concerned about her, but when they could no longer give her a ride she became upset. Ms. Weatherman's supervisor stated that appellant complained about the agency unit as a whole but could not give any specifics, names and or dates of any incidents. She also gave appellant a schedule change in order to accommodate her schedule. Finally, appellant took time off work and leave without pay because of personal problems. She called in sick on June 30, 1999 and did not return to work. She resigned on September 2, 1999.

By decision dated March 20, 2001, the Office of Workers' Compensation Programs denied appellant's claim finding that she did not establish any compensable factors of employment and did not meet the guidelines for establishing that she was injured in the performance of her duties.

Appellant disagreed with the Office's decision and requested a review of the written record. She claimed that her allegations of harassment could be verified by grievances filed by other employees against the supervisors in the employing establishment, but she did not provide this evidence.

Appellant also submitted medical evidence diagnosing adjustment disorder and major depression. She also submitted a copy of a letter requesting sick leave due to "personal pressure." Appellant stated that her sister-in-law had died in February and that she was caring for her 96-year-old mother and 79-year-old sister who were in nursing homes. She also indicated that her two older brothers died in 1991 and 1993 and that she was having problems with other relatives regarding a house that was bequeathed to her by a sister-in-law. She acknowledged in the letter that her personal problems also caused her problems at work.

By decision dated February 22, 2002, the Office hearing representative affirmed the Office's March 20, 2001 decision denying appellant's claim for an emotional condition, finding that there was insufficient evidence to establish that any potentially compensable factors of employment occurred. The hearing representative noted that appellant submitted copies of letters she wrote to various officials regarding various complaints, but did not submit any decisions from any grievance proceedings or Equal Employment Opportunity Commission (EEOC) or other administrative bodies showing any improper or erroneous actions by her supervisors or coworkers.

The Board has duly reviewed the case record and finds that appellant has failed to establish that she sustained an emotional condition in the performance of her 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 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 employment and have some kind of causal connection with it but nevertheless are not covered because they are not found 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 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 coverage of the Federal Employees' Compensation Act.¹

Perceptions and feelings alone are not compensable. 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.² To establish her claim that she sustained an emotional condition in the performance of duty, a claimant 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.³

In the present case, appellant alleged that her emotional condition was caused by intimidation, character assassination and criticism of her personality and her work. She also alleged that she immediately felt uncomfortable and unwanted and that her coworkers blocked her way in training and applying for other jobs. She alleged that her supervisor purposefully did not sign an application she submitted for a position at office headquarters and was also given work and then told to do it incorrectly. Appellant alleged that she had problems with her coworkers, that she overheard other employees on the telephone talking about her and that another employee, Mr. Togan stalked her. She alleged that her coworker Leo McDaniel forged her name and filed a claim against, Ms. Weatherman for racial remarks.

In the case of *Jovaunda Brown*,⁴ the employee alleged that she was intimidated and harassed by her coworkers and supervisors at work. The Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁵ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁶ In *Brown*, the employee indicated that she had filed complaints before the EEOC and the record contained copies of such complaints; however, the record did not contain any findings of harassment or discrimination. The employee submitted no other evidence that established harassment or discrimination. In the present case, appellant did not submit any evidence that substantiated her allegations of harassment and discrimination at work. She did not submit any probative evidence, such as witness statements, statements from her supervisor or copies of police reports,

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

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

⁴ *Jovaunda Brown*, Docket No. 98-886 (issued November 22, 1999).

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁶ *Helen P. Allen*, 47 ECAB 141 (1995).

that could establish that these claimed events actually occurred. The Board finds that appellant has not established a compensable factor in this regard because she did not submit any corroborating evidence to substantiate her allegations.

Appellant also alleged that her work and her personality were criticized. The criticism of appellant's work falls into the category of administrative or personnel actions and is not considered to be an employment factor.⁷ An administrative or personnel matter will only be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁸ Appellant's agency and her supervisor have discretion, as a personnel action, to comment on the quality of appellant's work. The Board has reviewed the record and finds no evidence that appellant's supervisor or her agency erred or abused appellant in handling personnel matters and, as such, this factor is not a compensable factor.

Appellant further alleges that her supervisor purposefully did not sign an application for employment and that she was given work and then told to do it incorrectly. Ms. Weatherman explained that appellant was a senior employee at the agency and was eligible to apply for other positions at her level if she was unhappy with her current position. She indicated that appellant was "in the top five" out of approximately 800 employees on the seniority list and that her high seniority would enable her to select any job that was posted without taking a downgrade. Ms. Weatherman also noted that there were numerous jobs posted during the time frame in question, including many positions at appellant's level. The Board finds that there is no evidence of record to show that appellant's supervisor purposefully did not sign an application for employment when appellant applied for a different position. Appellant has submitted no probative evidence to corroborate her allegation that her supervisor purposely did not sign her employment application. She also submitted no evidence indicating that she was given work and then told to do it incorrectly. Appellant's claims are unsubstantiated.

As appellant has not provided any evidence to establish any compensable factors of her federal employment that she alleges caused or contributed to her emotional condition, she has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of her duties.⁹

⁷ *Patricia English*, 49 ECAB 532 (1998).

⁸ *Tommie Johnson, Jr.*, Docket No. 99-2340 (issued February 26, 2002).

⁹ As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be reviewed in this case.

The decision of the Office of Workers' Compensation Programs dated February 22, 2002 is hereby affirmed.

Dated, Washington, DC
March 10, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member