U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILLIAN M. SEGRAVES and U.S. POSTAL SERVICE,
POST OFFICE, North Platte, NE

Docket No. 03-79; Submitted on the Record;
Issued March 27, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty.

On March 26, 2002 appellant, then a 44-year-old letter carrier, filed an occupational disease claim, alleging that on February 28, 2002 she became aware that she sustained post-traumatic stress disorder and major depression which was exacerbated by a hostile work environment.

Appellant contended that the management and the union harassed and discriminated against her because she was a female and her husband was also a letter carrier. She contended that she had to endure "cruel and inhuman" treatment and was subject to continuing sarcastic remarks. Appellant gave numerous examples of the alleged harassment and discrimination. In a statement dated February 23, 2001, appellant stated that, while she was casing the mail on January 18, 2001, a letter carrier and former union president, Jim Maneth, turned to her and said that he noticed she clocked in late in the morning and had not done a safety inspection. Appellant told him that she had done a safety inspection and her coworker, Gary Basgall, verified that she had and that the letter carrier, John Steiner, assigned to her route witnessed her conducting the safety inspection. She stated that, later that day, Mr. Basgall told her that there was a house available on the route to which he was assigned and when she said she was not interested, Mr. Maneth said in an "irritated tone of voice, '[w]hat are you a victim of this time Nicole?'"

Appellant stated that, shortly after that incident, she discovered one of Mr. Maneth's misthrows on her rack and when she returned it to him telling him that he needed to take care of his own misthrows, "words were exchanged" and he called her "psycho bitch" in a derogatory manner. She stated that she informed Mr. Maneth that she expected more professional behavior from the President of NACL Branch 1122. Appellant stated that the following day she was placed on administrative leave following an on-the-job injury and the employing establishment sought her removal. She stated that she wrote a letter requesting that Mr. Maneth not represent

her in any grievance or arbitration and he "evidently" telephoned someone in the NALC and found that appellant had no choice but to be represented by him. Appellant stated that she met with management on November 8, 2001 but that did not stop the union from harassing her or retaliating against her for filing an Equal Employment Opportunity (EEO) complaint.

Appellant stated that around the middle of March 2001, while reviewing the financial records of the union relating to her tenure as secretary to the union she noted that Mr. Maneth was double paid. She requested that an audit of the books be performed at the April meeting which was done. Appellant stated that on June 21, 2001 the union steward questioned her about the accounting problem and asked her to bring in the paperwork. When she brought in the paperwork the next day, the union steward got "defensive and nasty and began defending Mr. Maneth accusing [appellant] of trying to hurt [his] honor." Appellant stated that she got angry and told him "[w]hat about the hell he has put me through since I [have] been here!" Upon further discussion that day with the union steward and Mike McGurk, appellant got angry and said, "I showed you what you wanted to know and I am done with this!" She walked away "very upset." Later appellant had chest pains and Ms. Gilliland rushed her to the hospital. Appellant stated that, in the next couple of weeks, she had more discussions about the accounting records and in one incident the union steward told her that everyone thought she was trying to hang Mr. Maneth and when he started naming people she started crying.

Appellant stated that on September 12, 2001 the union steward stated that she had not charged "Schneider" one hour and she said she had forgotten to write down a "refusal for an hour" because he had to be off by 5:00 to pick up his children. The union steward challenged her writing two hours for her husband's sick leave instead of 1.75 hours. Appellant stated that on October 1, 2001 the union steward came up to her and reminded her that "Steiner and Macy" had priority over her on the bid for C11 and when appellant told the postmaster he agreed which upset her and caused her to cry. Subsequently, the two coworkers declined the bid and "Rick" [apparently the shop steward] apologized.

Appellant stated that on October 2, 2001 Ms. Gilliland informed her that as a part-time flexible (PTF) worker, if she took a day off during her bid schedule workdays, she had to use leave and would have to use leave on October 5, 2001. She stated that Ms. Gilliland allowed another worker to take a day off during her scheduled bid without using leave.

Appellant stated that on October 11, 2001 she was told that her supervisor wanted to talk to her in the back room and when she got there the vice president of the union, Mr. McGurk was there. She stated Ms. Gilliland told her that a PTF regular had to wait until the next quarter to get on the overtime list. Appellant stated that she got upset and said: "Even though the last PTF's [which was a male] were allowed to get on the list before the next quarter?" and Mr. McGurk said in a nasty tone, "[t]hat was when your husband was union steward, now it is me!" Later appellant went into the postmaster's office with her husband and the postmaster told her that she would be on the list until he received a grievance. She said he told her in a "sharper tone of voice" that "there will be no more "[t]rash [t]alk" like he heard that morning and that he was giving a direct order in a stand up tomorrow that it will stop!" Appellant stated that just the day before management made a derogatory remark about her to another carrier at work where everyone could hear and management did not do anything about it. Appellant said she wanted to discuss the "trash talk" comment and the derogatory statement that Mr. McGurk made to her with Ms. Gilliland but Ms. Gilliland told her that she was "just nitpicking" and if "I got mad

every time someone made a comment to me, I would be mad all the time." She stated that she felt that the statement showed management would not support her and would give the union more power to harass her. She stated that on "October 13[, 2001]" she asked to have her name taken off the overtime list because, as she told her husband, she could not take the unions attacks anymore.

Appellant stated that on January 24, 2002 she was embarrassed when in response to her request for leave, her supervisor said in front of the union members "you mean you want to leave now, today," perceiving it as a violation of her privacy. Appellant went to the postmaster to complain about the incident and the postmaster said he had noticed a conflict between Ms. Gilliland and her and when appellant returned they would sit down and discuss it.

On January 7, 2002 appellant stated that the postmaster told her case up to four feet yet told Mr. Maneth, who was standing next to her he could case up to two feet. Appellant stated that on January 5, 2002 Ms. Gilliland decided to take one hour off of the C9 route and when appellant asked her if she were giving her husband eight hours off, Ms. Gilliland said in a sarcastic tone of voice, "No, I [a]m giving you overtime!" She stated that she was "surprised by her response and embarrassed" because everyone heard her and it appeared she was making a scene.

Appellant stated that on March 4, 2002 her husband came home with the thank you note she sent the union to thank her for the plant they sent her and the postmaster had told him to take it down because it was inappropriate. The thank you card had a picture of her in Desert Storm carrying a gun. Appellant stated that she meant nothing by it.

In an interview by telephone with appellant dated March 27, 2002, the manager of safety and health, Ellen Fischman, summarized her investigation of appellant's problems stating that appellant's problems stemmed primarily from union-related interactions and conflicts and that management had demonstrated activities to address any mistreatment while at work as in offering her Employee Assistance Program (EAP). She stated that whether appellant's problems at work exacerbated her Desert Storm post-traumatic stress syndrome was questionable as appellant was unable to give her specific events that clearly showed poor treatment by the union member while under postal management or that any questionable activities under the control of local postal management were not addressed.

In a statement dated April 3, 2002, the safety and injury compensation specialist, Louise M. Crooks, stated that appellant was not happy with the way the overtime daily list was handled, yet it was handled according to the NALC contract and NALC-USPS Joint Contract Administration manual. Ms. Crooks stated that appellant was full time October 6, 2001 and would not have been eligible until January 1, 2002 and that she felt she should have gone on the list sooner than the time she was eligible because of past practice. Ms. Crooks stated that appellant was not awarded an EEO or discrimination case. She stated that appellant agreed to a REDRESS (Resolve Employment Disputes Reach Equitable Solutions Swiftly) and was put on the overtime list as a result of the REDRESS process, but she went on leave before the next quarter of overtime was given.

In a statement dated April 6, 2002, Ms. Gilliland stated that the REDRESS agreement between management and appellant stated that the supervisor would make up the difference

between the highest person on the list and appellant, which came to 47.08 hours. Ms. Gilliland stated that since appellant only needed to be within 10 hours she only needed 37.08 hours, management had two quarters in which to accomplish the schedule change and management "did what was required within the time frame given." She stated that management then had to "get her even" with other people on the overtime daily list after appellant agreed to the number of hours but were not able to accomplish that since she was not at work.

In a letter to an EEO representative dated January 20, 2002, appellant stated that management had violated the signed settlement the REDRESS, which had caused her additional stress and additional alienation between her and other letter carriers. She stated that the results of the violation led to the union's refusal to represent her husband in a grievance and "in a mass protest of the other carriers getting off the overtime desire list."

By letter dated April 10, 2002, Ms. Gilliland stated that she "never intentionally belittled [sic] anyone in front of other employees, that is counterproductive to my job of getting the mail delivered." Referring to the incident where appellant was upset with her remark about if she got upset about everything people said about her, she would be mad all the time, she said that she made the remark in a private meeting between appellant, Mr. McGurk and herself.

Ms. Gilliland stated that regarding the two incidents in which appellant stated that the union steward confronted her while she was out on her route, she said that appellant did not tell her about the incidents until a much later date and did not remember how long ago that had been. She told appellant she need to tell management when these matters happened so they could be corrected but she nonetheless spoke with the union steward and informed the postmaster of the conversation.

Ms. Gilliland stated that at the office appellant's "case" was in front of her and she had a view of 10 other cases. She stated that at no time did she witness or hear any threatening remarks or see any threatening gestures toward appellant. Ms. Gilliland did not recall that, during a heated argument between appellant and the union steward, she walked by and did nothing. She stated that on November 9, 2001 the postmaster gave a direct order that no trash talk would be tolerated on the workroom floor else immediate disciplinary action would be taken and everyone would be treated with dignity and respect. Ms. Gilliland stated that on November 15, 2001 the postmaster arranged for an intervention team consisting of the NACL President and Mr. McMahn and they had a meeting with all the carriers and subsequently there were two follow-up "visits."

By letter dated April 17, 2002, the Office of Workers' Compensation Programs requested additional information from appellant including a detailed description of the employment-related conditions or incidents, which caused her illness.

In an undated statement, appellant stated that, while she was having an argument with Rick Yaeger about the problem with the union's checking account, Chris Goering stopped by and did nothing. Appellant stated that when she gave Ms. Gilliland the letter requesting to get off overtime daily list on October 13, 2001 and informed management that she felt threatened and intimidated by the local branch union members, Ms. Gilliland did nothing.

In a statement dated May 9, 2002, the supervisor of customer service, Mr. Goering, stated that he was present when appellant came up to his desk complaining of chest pains. He stated that he recalled several occasions when appellant would talk to her union representative and that occasionally she would "get vocal" and she told him she did not feel that she was being treated fairly and on occasions would be "very upset," with a "very red face and watery eyes." Mr. Goering stated that after discussing it, she would usually agree that she was not being treated any differently than anyone else. He stated that in most cases they agreed that she had just perceived the situation incorrectly and should not have gotten so upset about it. Mr. Goering did not recall appellant having a confrontation with the union steward.

By decision dated September 17, 2002, the Office denied the claim, stating that the incident described by appellant was not within the performance of her duty.

The Board finds that appellant did not establish that she sustained an emotional condition in the performance of duty, as alleged.

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 her 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.[1] 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.[2]

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.[3] The issue is not whether the claimant has established harassment or discrimination under standards applied the EEO Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.[4] To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.[5]

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Clara T. Norga*, 46 ECAB 473, 480 (1995); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[3] *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

[4] *See Martha L. Cook*, 47 ECAB 47 ECAB 226, 231 (1995).

[5] *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

of her regular duties, these could constitute employment factors.[6] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[7]

Appellant did not present corroborating evidence that Mr. Maneth called her derogatory names, spoke to her in an irritated tone or challenged her on whether she performed a safety inspection. She did not present corroborating evidence that, when she informed the union steward that Mr. Maneth was double paid by the union, the union steward and her had an argument and he subsequently confronted her twice on her route about the matter. Further, Ms. Gilliland stated that when appellant told her of the problem, some period of time after it occurred, she addressed the matter with Mr. Maneth and informed the postmaster of the conversation. Appellant did not corroborate that, despite her objection, the union only permitted Mr. Maneth to represent her and this constituted harassment. She did not corroborate that the union steward challenged her record of the hours a coworker and her husband took off. Appellant also did not present corroborating evidence that the union harassed her or retaliated against her for filing an EEO complaint. She did not establish that she had to endure "cruel and inhuman" treatment and was subject to frequent sarcastic remarks by management and the union. In her April 10, 2002 statement, Ms. Gillilland stated that she never intentionally belittled anyone in front of other employees and that, despite her view of most of the cases, she never saw or heard anyone make threatening gestures or remarks to appellant. Moreover, regarding union activities in general, the Board adheres to the principle that union activities are personal in nature and are not considered to be within the course of employment.[8]

Appellant's complaint that she was not properly put on the overtime list when her status changed from PTF to a regular carrier was addressed by management. Ms. Gilliland stated that in the REDRESS agreement she agreed that in two quarters management would give appellant 37.08 hours and did so within the given time frame. She said, however, that they could not catch appellant up to the others on the overtime daily list because she stopped working. Ms. Crooks stated that the overtime daily list was handled according to the NALC contract and the NALC-USPS Joint Contract Administration manual. Moreover, the Board has held that matters pertaining to overtime in terms of appellant's work status and ability to take certain kinds of leave are administrative functions of the employer and as such are not compensable unless appellant shows that management acted abusively or unreasonably.[9] Appellant had not made this showing. She did not show that management violated the REDRESS agreement.

Appellant did not corroborate that on October 1, 2001 there was a problem regarding the possibility of two coworkers being offered the bid before she was offered it although as it turned out, the two employees declined the offer. She did not corroborate that the postmaster told her to case up to four feet and permitted Mr. Maneth, who was standing near her to case up to two feet. Appellant did not corroborate when she asked Ms. Gilliland on January 5, 2002 if she was giving

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[6] *Clara T. Norga*, *supra* note 2 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

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

[8] *Marie Boylan*, 45 ECAB 338, 342 (1994).

[9] *See John Polito*, 50 ECAB 347, 349 (1999); *Martha L. Watson*, 46 EAB 407, 418-19 (1995).

her husband eight hours off, Ms. Gilliland said in a sarcastic tone in front of other workers that she was giving her overtime. She also did not corroborate that on January 24, 2001 Ms. Gilliland embarrassed her in front of other coworkers and violated her privacy when in response to her request for leave, she said "you mean you want to leave now, today." Appellant did not provide corroborating evidence that Mr. Goering did nothing when he observed her having an argument with Mr. Yaeger about the accounting problem in the union's records. Although appellant indicated that she was offended and upset when "management" told her it did not want any "trash talk" on the workroom floor, Ms. Gilliland said on November 9, 2001 the postmaster gave a direct order that no trash talk would be tolerated on the workroom floor and everyone should be treated with dignity and respect. She did not show that those words were specifically targeted at her and constituted harassment. Further, appellant did not show that she was subject to harassment when management had her husband return the thank you note she sent to the union given there was a wartime picture of her on it.

Ms. Gilliland also stated that on November 15, 2001 the postmaster arranged for an intervention team consisting of the NALC President and Mr. McMahn to have a meeting with all the carriers and there were two follow-up visits. In the report of the telephone interview with appellant on March 27, 2002, Ms. Fischman concluded that appellant's problems stemmed primarily from union related interactions and conflicts and that management had demonstrated activities to address any mistreatment while at work. Appellant has not established that management or the union committed acts of harassment or discrimination towards her and has not established a compensable factor of employment.[10]

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

Dated, Washington, DC
March 27, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] Since appellant has failed to establish a compensable factor of employment, she has failed to establish her claim and the medical evidence need not be addressed. *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).