

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTORIA HANDLE and U.S. POSTAL SERVICE,
POST OFFICE, Edison, NJ

*Docket No. 03-171; Submitted on the Record;
Issued March 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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

In May 2001, appellant, then a 48-year-old supervisor of distribution operations, filed an occupational injury claim alleging that she sustained an emotional condition due to various incidents and conditions at work, including an encounter on May 1, 2001 with her superior, Daniel Hill. By decision dated November 5, 2001, the Office of Workers' Compensation Programs denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. By decision dated and finalized August 27, 2002, an Office hearing representative affirmed the Office's November 5, 2001 decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

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.³ 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.⁴

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.⁵ 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions, but the Office denied her claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that on May 1, 2001, Mr. Hill, a superior, harassed her by “yelling and screaming” at her regarding the condition of her work area. She claimed that Mr. Hill would not allow her to speak and made statements such as, “You do n[o]t know anything and You do n[o]t do anything.” Appellant alleged that he used rude and vulgar language and told her to “shut up.” She claimed that shortly after this incident, Joseph Sernio, another superior, told her that she could have an injury claim form, but that he was “not going to do anything with it.” Appellant claimed that she again encountered Mr. Hill and that he “nastily” asked her if she would be using sick leave. She indicated that, while she was standing close to him, Mr. Hill then punched the door of an office with all of his strength and that he and Dennis Cicatello, a coworker, entered the office and slammed the door behind them. Appellant indicated that she felt threatened and embarrassed by Mr. Hill’s actions. She asserted that Mr. Hill had previously threatened and assaulted several of her coworkers. Appellant claimed that in mid April 2001 she “warned” Mr. Sernio about Mr. Hill’s violent behavior, but that Mr. Sernio did not take any action. She claimed that three years prior Mr. Hill discriminated against her by denying her request for annual leave despite the fact that he had approved the leave requests of the male employees.

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, for harassment or discrimination to give rises 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.⁸

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.⁹ Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she did not provide sufficient evidence, such as witness statements, to establish that the statements were actually made or that the actions actually occurred as alleged.¹⁰

With respect to the May 1, 2001 incident, Mr. Hill stated, in response to questioning by Mr. Sernio, that he may have spoken in a loud tone of voice on May 1, 2001, but that he did not yell or scream at appellant.¹¹ Appellant alleged that Mr. Hill made various insulting and vulgar comments to her on May 1, 2001, but she did not submit sufficient witness statements to support this assertion.¹² The evidence reveals that Mr. Hill bumped an office door open on that date, but there is no evidence to support appellant's assertion that Mr. Hill violently punched the door with all of his strength.¹³ For example, Mr. Sernio indicated in a June 20, 2001 statement that Mr. Hill forcibly opened the door and that he followed Mr. Hill into the office and closed the door behind him without slamming it. Appellant has not established that Mr. Hill's actions on May 1, 2001 were of such a nature that they would rise to the level of harassment. Appellant indicated that Mr. Hill had acted violently towards coworkers in the past, but she did not support this assertion or explain how such alleged actions would establish her allegations of harassment

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ 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).

¹⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹¹ Mr. Hill stated that he spoke to appellant about her absence from her work assignment area and that appellant began to argue with him in a loud voice.

¹² In a May 28, 2001 statement, Melinda Lew, a coworker, stated that on May 1, 2001, she "saw [Mr.] Hill yelling at [appellant] about something." However, Ms. Lew did not provide any details of this conversation and her statement must be considered to be vague in nature.

¹³ Mr. Hill indicated that he "bumped" the door open with his hand when he entered the office and that Mr. Cicatello closed the door behind him.

or discrimination.¹⁴ Moreover, there is no evidence that other supervisors failed to monitor Mr. Hill's behavior or that he discriminated against her regarding leave requests.¹⁵

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.¹⁶

The August 27, 2002 and November 5, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
March 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁴ In a June 2001 statement, Kim Vinson, a coworker, indicated that she felt uncomfortable working with Mr. Hill because of "the way he use[d] to talk to other supervisor[s]." However, Ms. Vinson did not provide any details of the basis for her feelings in this regard.

¹⁵ In a June 20, 2001 statement, Mr. Sernio stated that appellant never "warned" him about Mr. Hill.

¹⁶ 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).