U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VALERIE E. PORTER and U.S. POSTAL SERVICE,
POST OFFICE, Culver City, CA

Docket No. 03-293; Submitted on the Record;
Issued March 24, 2003

DECISION and ORDER

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

The issue is whether appellant has established that she sustained an emotional condition within the performance of duty.

On March 27, 2001 appellant, then a 38-year-old letter carrier, filed a claim for job-related stress. In an October 4, 2001 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the evidence of record failed to establish that she sustained an emotional condition in the performance of duty. Appellant requested a hearing before an Office hearing representative which was conducted on April 2, 2002. In a July 24, 2002 decision, the Office hearing representative affirmed the decision of the Office.

The Board finds that appellant has not established that she sustained an emotional condition, as alleged.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition that will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal

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

injury sustained in the performance of duty within the meaning of the Act.[2] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

Appellant alleged numerous incidents that she contended were the cause of her emotional condition. She stated that, on January 26, 2000, she requested additional time to deliver her route. She indicated that a supervisor, Ron Bertrand, came over to her and began yelling at her in front of other employees because he did not believe that appellant needed that much time. Appellant claimed that she told Mr. Bertrand that his conduct was out of line and had to be dealt with. He questioned whether appellant was making a threat. The employing establishment claimed that appellant said that she would not let Mr. Bertrand stress her out and that she would deal with him later. At that point, according to the employing establishment, Mr. Bertrand asked if appellant was making a threat. A witness stated that she saw Mr. Bertrand yelling at appellant about her request for additional help in delivering mail. She indicated that appellant told Mr. Bertrand that he had the right to deny her request and asked why he was harassing her. She stated that Mr. Bertrand yelled, "are you threatening me?" Appellant stated that, following the incident, Mr. Bertrand followed her on her route, even when she stopped for lunch. Appellant indicated that she ended up coming home sick that day.

Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by appellant and supported by the evidence, may constitute a compensable factor of employment.[4] However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[5] In this case, there are conflicting statements about what was said by each party. The evidence does indicate that Mr. Bertrand loudly questioned appellant's need for help or additional time and whether a statement by appellant was a threat. However, the evidence is insufficient to indicate that Mr. Bertrand engaged in verbal abuse of appellant at that time. Mr. Bertrand's monitoring appellant's delivery that day is within the administrative action of supervising appellant.[6] There is no evidence that Mr. Bertrand's action at that time was abusive or constituted harassment. This factor, therefore, cannot be considered a compensable factor of employment.

Appellant contended that she was subjected to harassment by Mr. Bertrand. She stated that Mr. Bertrand had been supervised by her mother years earlier and that she had disciplined

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[2] *Artice Dotson,* 41 ECAB 754 (1990); *Allen C. Godfrey,* 37 ECAB 334 (1986); *Buck Green,* 37 ECAB 374 (1985); *Peter Sammarco,* 35 ECAB 631 (1984); *Dario G. Gonzalez,* 33 ECAB 119 (1982); *Raymond S. Cordova,* 32 ECAB 1005 (1981); *John Robert Wilson,* 30 ECAB 384 (1979).

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

[4] *Janet D. Yates*, 49 ECAB 240 (1997).

[5] *Christophe Joliocoeur*, 49 ECAB 553 (1998).

[6] *Michael Ewanichak,* 48 ECAB 364 (1997).

him on several occasions. Appellant contended that Mr. Bertrand was engaging in retaliation. She submitted a statement from a woman who indicated that Mr. Bertrand was her supervisor in 1984 and claimed that she was the sister to appellant's mother. She claimed that Mr. Bertrand engaged in harassing her because of his mistaken assumption that she was related to appellant's mother. Appellant made a general allegation that her emotional condition was due to harassment by Mr. Bertrand. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[7] Appellant alleged harassment and submitted evidence contending that Mr. Bertrand would harass relatives of her mother. However, this evidence is insufficient to establish that the actions of Mr. Bertrand rose to the level of harassment. Appellant, therefore, has not established that Mr. Bertrand harassed her.

Appellant pointed to letters of warning that she claimed were instigated by Mr. Bertrand. The employing establishment indicated that Mr. Bertrand was responsible for only one letter of warning. The letters of warning for various infractions of rules are a disciplinary action by management and therefore do not constitute compensable factors of employment.[8] Appellant argued that several disciplinary actions were subsequently reduced which established that the employing establishment had erred in issuing the disciplinary actions. The employing establishment indicated that some disciplinary actions were reduced but that such actions did not show error. The mere fact that an employing establishment reduced disciplinary actions taken towards an employee does not establish that the employing establishment acted in an erroneous or abusive manner.[9]

Appellant contended that, after an injury she sustained involving a dog, she was on limited duty. She contended that the postmaster, Russ Nolan, checked on her disability status, claiming that appellant's physician would write the restrictions that appellant wanted. Mr. Nolan stated that it was his duty to be informed on the status of the employee's ability to work as part of his managerial duties. The determination of a claimant's ability to work after an injury is an administrative manner and not part of appellant's assigned duties. Appellant has not established that Mr. Nolan's inquiries constituted harassment, error or abuse.

Appellant claimed that she was harassed and falsely accused concerning a parcel found in her postal vehicle on March 16, 2001. Appellant stated that the parcel was not there the night before because she had cleaned out the vehicle. A supervisor testified that she did not see the parcel in the vehicle the night before. A letter carrier found the parcel the next morning and

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[7] *Joan Juanita Greene*, 41 ECAB 760 (1990).

[8] *Gregory N. Waite,* 46 ECAB 662 (1995).

[9] *Garry M. Carlo*, 47 ECAB 299 (1996).

brought it to appellant's attention. Mr. Nolan called appellant into his office to investigate the incident. Appellant denied that she left the parcel in the truck and claimed someone was trying to set her up. She indicated that Mr. Nolan questioned her credibility, based on her disciplinary record. Appellant's stress in this incident arose from the investigation into how the parcel got into her postal vehicle. Such an investigation in monitoring a mail route is an administrative matter in which Mr. Nolan was carrying out his role.[10] The actions in reviewing and investigating charges and rendering decisions do not relate to appellant's assigned duties and are not compensable factors of employment.[11]

In a similar incident, in November 2000, a letter carrier found 79 pieces of mail from appellant's route that had not been cased and delivered. Appellant submitted witnesses who stated that they did not see the unsorted mail. The employing establishment responded that the mail was in a basket covered by another basket. Appellant denied that she had failed to deliver the mail. However, she was given a letter of warning. Such an investigation and disciplinary action on the part of the employing establishment was an administrative action and not within appellant's assigned duties. There is no evidence that the employing establishment erred or was abusive in its investigation and disciplinary action. This incident therefore was not a compensable factor of employment.

Appellant was disciplined for driving with the right door open on her postal vehicle, which violated employing establishment safety rules. Appellant contended that she was trained incorrectly. An employing establishment official stated that appellant was told that it was alright to leave the right door open with her seat belt on while collecting from boxes only but the doors were to be closed at all other times and never left open while going through an intersection. Such a disciplinary action is an administrative matter. There is no evidence that the employing establishment erred or was abusive in its actions regarding the violation of safety rules.

Appellant was disciplined for refusing duty on two occasions, June 11 and August 13, 2000. She claimed that she refused duty on June 11, 2000 because she had a prior religious obligation and was willing to switch dates with a coworker. She refused to express mail deliveries on August 13, 2000 contending that it was beyond her work restriction. Appellant was disciplined for the August 13, 2000 incident because the duties were within her work restrictions. The assignment of work times and duties are an administrative matter and are not connected with the performance of appellant's assigned duties.[12] There is no showing of error or abuse in the work assignments to appellant. Therefore these incidents are not compensable factors of employment.

Appellant claimed that on one occasion she was not informed of a telephone message from her son's school. She only discovered that she had a message when she saw a note attached to her time card. Appellant indicated that her son has asthma and the call was from the school informing her of an asthma attack. She alleged that, when she did not call back, the school was

[10] *Michael Ewanichak*, *supra* note 6.

[11] *Blondell Blassingame*, 48 ECAB 139 (1996).

[12] *Alice M. Washington,* 46 ECAB 382 (1994).

about to call protective services concerning her absence. Her son, instead walked home. She took her son to the hospital. Mr. Nolan stated that the call from the school did not indicate the nature of the message or the emergency. Although Mr. Nolan noted that the responsible supervisor apologized to appellant, this is not enough to establish error in this matter.

In a May 23, 2001 report, Dr. Arnold P. Nerenbeg, a psychologist, stated that appellant had felt harassed and discriminated against during her employment. He cited several incidents such as being falsely accused of delaying the mail, disciplinary actions that were later found to be inaccurate, the failure to inform her of her son's emergency, the occasion when Mr. Bertrand followed her on her route, unfounded investigations and other incidents. He diagnosed major depression and post-traumatic stress disorder. He noted that appellant was having nightmares about work, a strong desire to avoid work, frequent flashbacks to traumatic incidents, which included being yelled at, depressed affect, insomnia, fatigue, severe anxiety, concentration and memory impairment, suicidal ideation, severe migraines, loss of motivation and interests and failure to enjoy life. Several of the factors noted by Dr. Nerenberg were either inaccurate, such as the allegation that disciplinary actions were unfounded, or were found not to be compensable factors of employment. Dr. Nerenberg's report is insufficient to establish appellant's claim.

The decision of the Office of Workers' Compensation Programs dated July 24, 2002 is hereby affirmed.

Dated, Washington, DC
March 24, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member