U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN L. BROWN and DEPARTMENT OF THE ARMY, TANK AUTO COMMAND, Warren, MI

Docket No. 02-1625; Submitted on the Record;
Issued May 5, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition causally related to her federal employment.

This case has previously been before the Board. In a September 28, 1999 decision, the Board noted that the Office of Workers' Compensation Programs failed to make appropriate inquiries of the employing establishment to determine whether appellant was subjected to verbal abuse and threats by her supervisor or threats and racial slurs by her coworkers. The Board found that the employing establishment did not err or act abusively in the administration of its personnel policies and, since appellant was no longer an "employee" of the employing establishment after March 31, 1998, her allegations of stress after that date were not compensable under the Federal Employees' Compensation Act. The Board further found that the Office properly denied appellant's request for a hearing under section 8124 of the Act. The law and facts as set forth in the Board's September 28, 1999 decision are incorporated herein by reference.[1]

Following the Board's September 28, 1999 decision, on March 20, 2001, the Office issued a decision which found that appellant failed to establish that she sustained an injury in the performance of duty as there was no evidence of abusive remarks or threats on the part of the employing establishment or the employee's coworkers.

On April 17, 2001 appellant requested a hearing before an Office hearing representative. The hearing was held on September 24, 2001. No new exhibits were submitted. At the hearing appellant provided a brief summary of the claimed incidents, upon which she had filed grievances and/or complaints in 1991 and 1992. Appellant alleged that on October 25, 1991, a coworker, Alvira Bills, threatened her. Appellant reported this incident to her supervisor, Major James Bonfield, and he said he counseled Mrs. Bills. Appellant filed a discrimination complaint

[1] Docket No. 97-218 (issued September 28, 1999).

on April 16, 1991. She further stated that an Equal Employment Opportunity (EEO) complaint was filed because Mrs. Bills was white and she is black. On June 24, 1991 appellant stated that she was required to fill out a leave application. She told her supervisor, Major Macik, that she did not have to fill out a leave application, but was told to do it. Appellant asserted that she filed a discrimination complaint on September 20, 1991 concerning the matter. On June 1, 1992 appellant asserted that Mary Lucas sprayed air freshener around her desk and she filed a complaint on this matter on June 14, 1992. Appellant stated that she was promoted as a secretary stenographer effective December 30, 1990 and was given "gofer" duties, instead of the duties stated in her job description. She asserted that she was denied job training sessions for time keeping. Appellant told Major Macik that time keeping was her job and was informed that it was Ms. Lucas' job. She filed a complaint regarding this matter on June 14, 1992. Appellant advised that when she got sick in June 1993, the employing establishment changed her job description. Her former job duties were given to Ms. Lucas, by Mrs. Bills. Appellant alleged that on or about May 21, 1992, Mrs. Bills called her "nigger" and threatened her for not signing for equipment. On October 2, 1992 appellant stated that she filed a complaint pertaining to the situation which arose during an August 17, 1992 meeting, whereby Major Macik told her to do Ms. Lucas' job. Appellant stated that while she was out sick, someone had used her name to request a computer printout of equipment. She stated that although these events occurred almost 10 years previously, it was still upsetting. Appellant acknowledged that all her EEO complaints ended in a determination that discrimination had not occurred. She further acknowledged that she lost no pay when her job duties were taken away.

In a March 8, 2002 decision, an Office hearing representative denied appellant's claim.

The record also contains an April 18, 1991 EEO counselors report, noted that appellant had alleged racial discrimination in that she worked in a hostile environment created by Mrs. Bills, Administrative Officer, a white female and civilian administrative officer to Major James A. Bonfield, XO, Program Executive Office. The EEO counselor presented her findings and indicated, based on the interviews conducted, that appellant's allegations could not be substantiated. The counselor noted that, during the final interview, appellant stated that she would file a formal complaint, because she could not let Mrs. Bills "get away with treating her like a slave."

Appellant refused to sign a June 4, 1991 negotiated settlement agreement with the employing establishment, which specifically noted that the employing establishment did not admit any liability. A June 19, 1991 memorandum from Gayle D. Bowman, case manager, indicated that appellant had refused, on three separate occasions, to sign the negotiated settlement agreement in an effort to resolve the complaint. She advised it was against regulation to mention Mrs. Bills' name in the settlement agreement. Mr. Bowman further noted that although appellant felt that she should be exempt from training, the training was command wide and appellant would eventually have to be trained.

On August 21, 1991 the employing establishment offered appellant a certification of full relief, whereby she would be "made whole" under the standard that would pertain if there were a finding of discrimination. In a letter dated October 4, 1991, the agency exercised its legal

option, of which appellant was previously informed and cancelled her complaint for failure to accept the certified offer of full relief.

In a May 5, 1993 report of investigation, an EEO investigator found that appellant did not establish a *prima facie* case of racial discrimination in connection with the alleged employment matters. It was further found that management articulated legitimate, nondiscriminatory reasons for the matters complained of and appellant had not shown, by a preponderance of the evidence, that the articulated reasons for those employment matters were a pretext for discrimination.

The Board finds that appellant has not established that she sustained an emotional condition causally related to factors of her federal employment.

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. When disability results from an emotional reaction to the employee's regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. The disability is not covered, however, when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feelings of job insecurity or the desire for a different job, promotion or transfer do not constitute personal injury sustained in the performance of duty.[2]

As a general rule, an employee's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.[3] Administrative and personnel decisions are generally related to the employment but they are functions of the employer and not duties of the employee.[4] The Board has held, however, that administrative and personnel matters will be considered as an employment factor where the evidence of record discloses error or abuse on the part of the employing establishment.[5] In determining whether the employing establishment has erred or acted abusively, the Board will examine the record to determine whether agency personnel acted reasonably.[6] The assignment of work is an administrative matter of the employing establishment and not a duty of the employee. Absent evidence to support a finding of error or abuse by the employing establishment, a work assignment is not a compensable factor.[7]

[2] *See Helen P. Allen*, 47 ECAB 141 (1995); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *See Janet I. Jones*, 47 ECAB 345 (1996).

[4] *See Alberta Kinloch-Wright*, 48 ECAB 459 (1997).

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

[6] *See Richard J. Dube*, 42 ECAB 916 (1991).

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

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[8] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[9] Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact finder must determine the truth of the allegations. The issue is not whether the claimant has established harassment or discrimination under the EEO Commission standards. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[10]

Appellant alleged that she sustained an emotional condition due to harassment and discrimination by her supervisors and coworkers. She reported that her supervisor threatened to "get" her for insubordination. Appellant also made a general allegation that her emotional condition was due to harassment by her supervisors and coworkers.

The Board has held that the actions of a supervisor, which an employee characterizes as harassment may also constitute factors of employment giving rise to coverage under the Act. The Board has also held that a tense relationship with a superior may constitute a factor of employment.[11] In this case, appellant alleged harassment in what she perceived to be abuse, threats and racial slurs by her supervisors and coworkers. She, however, failed to submit sufficient evidence substantiating her allegations of harassment, discrimination and intimidation by employing establishment, supervisors or coworkers, specifically. At the hearing, appellant recited her various grievances which took place almost 10 years previously. She noted that she had filed a discrimination complaint on April 16, 1991; filed a complaint on June 14, 1992 when Ms. Lucas sprayed air freshener around her desk; and filed another complaint when she was told to do Ms. Lucas' job. The filing of complaints, alone, are not sufficient to establish discrimination or harassment. The April 18, 1991 and May 5, 1993 EEO reports, which include the charges concerning threats, name calling and race, specifically found that appellant's allegations were not substantiated. An undated EEO counselor's report pertaining to appellant's refusal to fill out a leave application, did not find that the allegation of discrimination was substantiated. Appellant further alleged that she was required to fill out a leave application; however, there is no showing of error in this administrative matter. There was also no showing of any error or abuse pertaining to appellant's allegation that she was given "gofer" duties instead of her job description. Although the record contains a June 4, 1991 settlement agreement

[8] *See Michael Ewanichak*, 48 ECAB 354 (1997); *Martha L. Cook*, 47 ECAB 226 (1995).

[9] *See Parley A. Clement*, 48 ECAB 302 (1997).

[10] *See Michael Ewanichak, supra* note 8.

[11] *Neil R. Carney*, 36 ECAB 289 (1984); *Dorothy J. Williams*, 32 ECAB 665 (1981).

and a September 11, 1991 offer of full relief, the Board notes that neither was accepted by appellant and there is no admittance of wrong doing on the part of the employing establishment.

The Board, therefore, finds that the Office properly denied appellant's claim for compensation on the grounds that she failed to establish that she sustained an emotional condition in the performance of duty.[12]

The March 8, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 5, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[12] Because appellant has failed to allege a compensable factor of employment, the medical evidence was not considered.