

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of TAMMIE R. WELLS and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

*Docket No. 03-1879; Submitted on the Record;
Issued November 20, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

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 March 14, 2003 appellant, then a 39-year-old manual clerk, filed an occupational disease claim alleging that her major depression and anxiety disorders were aggravated after being constantly harassed following her repeated absences resulting from a job-related back injury.¹ Appellant asserted on the claim form that she first became aware of her disease or illness sometime in 1990 and realized that the disease or illness was caused or aggravated by her employment on March 14, 2003. Appellant stopped work on April 23, 2003 and has not returned.

In a letter dated May 7, 2003, the Office of Workers' Compensation Programs requested additional information from appellant in order to substantiate her claim. She submitted medical documentation and a statement dated May 27, 2003, in which she detailed that she had been constantly harassed due to her absences resulting from her job-related back injury. Appellant stated that the harassment persisted even though a physician documented each of her absences and that medical notes were submitted to her supervisor upon her return to work. She alleged that the injury compensation office disapproved all of her leave forms and gave her various reasons for disapproval, including that the medical documentation was "dated after the fact" and that she should have gone to a hospital for treatment when she had problems with her back since she worked nights. Appellant asserted that, when her back would go out she could not stand, much less drive a vehicle 30 miles to a hospital under the influence of pain medication. She stated that because the injury compensation office disapproved the absences the employing establishment considered her absences unscheduled which resulted in discipline from management.

¹ Appellant indicated in a statement that she sustained a work-related back injury on October 28, 1997 which was accepted by the Office (claim number 160306997). Further, the record reflects that appellant filed the claim on March 14, 2003 although the claim form was date stamped May 5, 2003.

Appellant further indicated that Frank Stalsby, appellant's supervisor, harassed her on the workroom floor on two different occasions in January and February 2003, in front of coworkers, during which times he spoke loudly stating that she had no work-related back claim and demanded medical documentation. Appellant alleged that she received suspensions from Mr. Stalsby and had been threatened with a letter of removal in front of coworkers. She further alleged that there had also been paperwork left upright on her supervisor's desk on the workroom floor concerning her discipline due to absences for her back for the entire unit to see. Appellant stated that she was approached by coworkers who informed her that she would be disciplined and the repeated humiliation aggravated her depression and anxiety disorder. She further indicated that on April 18, 2003 she inquired as to whether her CA-2 claim was filed with the Office and her supervisor indicated that he could not send it in until he filled out an accident report. Appellant asserted that this was a violation to hold her CA-2 claim for a month before submitting it to the Office.

Appellant submitted a witness statement from Helen Streetman dated May 26, 2003 in support of the claim. Ms. Streetman said that she witnessed Mr. Stalsby confront appellant on February 19, 2003 at the beginning of her tour and he loudly demanded medical documentation for her being off work. She indicated that she was sitting two feet behind appellant at the time of the incident. Ms. Streetman also stated that Mr. Stalsby told appellant that she had no claim with the Department of Labor on her back. She asserted that, when Mr. Stalsby told appellant to get her medical documentation so that he could do his paperwork, appellant asked what paperwork he was referring to and he responded "a letter of removal." Ms. Streetman indicated that appellant was crying and humiliated on the workroom floor after the incident. She further alleged that sometime in mid January she witnessed Mr. Stalsby speaking to appellant for 15 to 20 minutes and that it was obvious that appellant was upset. Ms. Streetman stated that the supervisor was speaking loudly and as she walked by she heard him say once again, "you have no claim with the Dep[artment] [sic] of Labor on your back." She indicated that appellant was crying and shaking and said that her heart beat was irregular and that she felt the onset of an anxiety attack.

In a letter dated May 27, 2003, the employing establishment challenged the claim. In a separate letter also dated May 27, 2003, Mr. Stalsby, appellant's supervisor, stated that he had been appellant's supervisor since January 2003, but that he had only seen her for an approximate total of two weeks since taking on the position. He indicated that appellant would call in requesting "IOD" and be told that she needed to bring in medical documentation to support her claim. Mr. Stalsby stated that, when appellant would return to work she would either fail to bring medical documentation or it would fail to meet the requirements of the injury compensation office. He further noted that appellant had been placed on restricted sick leave and had been issued disciplinary actions in accordance with the Employee Labor Relation Manual due to her attendance. Mr. Stalsby asserted that appellant had not been harassed or treated any different than any other employee with unsatisfactory attendance.

On June 11, 2003 the employing establishment submitted information to the Office regarding an investigation undertaken of appellant for unsatisfactory work attendance related to her previous back injury. In a June 6, 2003 investigative memorandum, the postal inspector noted that appellant was observed on May 27 and June 5, 2003, days that she was reportedly

medically disabled, performing nonwork-related activities such as climbing up and down stairs and carrying bags up to her apartment and a box on her shoulder without noticeable difficulty.

In the investigative memorandum, the Postal Inspector further noted that the employing establishment had accommodated appellant's back injury since 1997 and that as of June 6, 2003 she had negative 36 hours of annual leave and 16 hours of sick leave. The inspector submitted a copy of the restriction of sick leave notice issued to appellant on February 15, 2001 for her unsatisfactory absences.

In a decision dated July 1, 2003, the Office disallowed the emotional condition claim on the grounds that appellant failed to identify incidents, which occurred in the performance of duty.

The Board finds that appellant has not met 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.² 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.³

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.⁴ 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.⁵

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.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.⁷

Regarding appellant's allegations that she was unjustly denied leave and improperly disciplined and further, that her occupational disease claim was improperly delayed, the Board finds that these allegations pertain to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although the handling of disciplinary actions, claims, evaluations and leave requests are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁹ The Board has held, however, that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment personnel erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ In the instant case, appellant has not provided any evidence to show that the employing establishment acted abusively with respect to these administrative matters.

Appellant has also alleged that harassment and discrimination on the part of her supervisor contributed to her claimed emotional condition, to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his or her regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise 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.¹² In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was indeed harassed.¹³ Appellant alleged that Mr. Stalsby, her supervisor, harassed her on the workroom floor on two different occasions and threatened her with a letter of removal in front of coworkers. She further alleged that there had also been paperwork left upright on her supervisor's desk on the workroom floor concerning her discipline due to absences for others to see. Appellant believed that these actions constituted harassment and discrimination. There is no substantiation in the record, however, that any comments made by Mr. Stalsby regarding

⁷ *Id.*

⁸ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*; 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ 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).

absences or discipline to appellant in front of her coworkers or otherwise were abusive or constituted harassment, nor that paperwork was inappropriately left out in front of others to constitute error or abuse. While the witness' statement supplied by appellant to corroborate her claim indicated that Mr. Stalsby confronted appellant in January and February 2003, about submitting medical documentation for being off work and repeatedly stated that she had no employment-related back claim, this evidence is insufficient to corroborate that he harassed or discriminated against appellant.¹⁴ The Board notes that vague allegations of a supervisor berating and taunting appellant are insufficient to establish appellant's claim that he or she was harassed. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing, is self-generated and does not give rise to coverage under the Act, absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that in performing such duties, employees will at times dislike actions taken.¹⁵ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment. The Board finds that appellant's claim of an emotional condition did not arise in the performance of duty and must be considered self-generated.

The decision of the Office of Workers' Compensation Programs dated July 1, 2003 is affirmed.

Dated, Washington, DC
November 20, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ See *Dennis J. Balogh*, 52 ECAB 143 (2001).

¹⁵ See *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001).