

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CORANETTE L. STEPHENSON and U.S. POSTAL SERVICE,
MILWAUKEE PARCEL & DISTRIBUTION CENTER, Milwaukee, WI

*Docket No. 03-865; Submitted on the Record;
Issued October 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

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

On June 5, 2002 appellant, then a 29-year-old mail processor, filed an occupational disease claim alleging that she sustained a "mental and/or nervous disorder" in the performance of duty on or before March 10, 2002 due to harassment by her supervisors, Mr. and Mrs. David J. Bagrowski. Appellant noted that the emotional condition was a "recurring condition that [she] previously had on file." Appellant asserted that she experienced "anxiety attacks, fear of working and ... migraine headaches."¹ Mr. Bagrowski acknowledged that appellant reported her claimed emotional condition to him on May 23, 2002 but denied harassing appellant, noting that she had not reported a March 10, 2002 incident. Appellant had intermittent work absences from March 15 to August 9, 2002.

In a June 10, 2002 Family and Medical Leave Act (FMLA) certification form, Dr. Evelyn E. Burdick, an attending family practitioner, stated that beginning in 2000, appellant had chronic, severe headaches, fatigue and tearfulness secondary to stress, narcolepsy and "stress secondary to work," with an exacerbation during the previous two weeks. Dr. Burdick held appellant off work from May 23 to 27, 2002, noting that appellant's narcolepsy necessitated sedentary work. In a June 14, 2002 form report, Dr. Burdick diagnosed an anxiety disorder, acute stress reaction and migraine headaches due to "fear of anthrax, bombs, etc.," at work.

In a July 15, 2002 letter, the Office of Workers' Compensation Programs advised appellant that the evidence of record was insufficient to establish her claim. The Office noted that Dr. Burdick was not a psychiatrist or psychologist and attributed appellant's condition to a fear of anthrax and bombs, not to supervisory harassment. The Office afforded appellant

¹ In an August 12, 2002 letter, appellant also asserted that the alleged harassment caused "severe hair loss, tremendous ... mental, emotional, physical" and financial pain.

30 days, in which to submit a detailed description of the alleged work factors and a rationalized report from a psychiatrist or psychologist explaining how and why those work factors would cause the claimed emotional condition.²

In an August 12, 2002 letter, appellant asserted that when she first met Mr. Bagrowski on March 10, 2002 he said “I’ve been expecting you’ (in a very offensive manner),” that he sighed and “rolled his eyes” on March 14, 2002 because she did not have a copy of a leave form and that on March 27, 2002 he “intimidated” her by requiring her to report to him in person. Following prescheduled annual leave from March 28 to April 5, 2002, appellant called in sick on April 6, 2002 due to anxiety. She alleged that upon returning to work on April 9, 2002 Mr. Bagrowski commented that she “call[ed] in after being on annual for nine days,” causing her to become ill, such that she submitted a FMLA request. Appellant worked on April 11, 2002 then took leave for April 12 and 13, 2002. On April 16, 2002 Mr. Bagrowski requested medical documentation for appellant’s April 12 and 13, 2002 work absence. On April 17, 2002 Mr. Bagrowski removed appellant from her bid position to a different pay location as coworkers had filed grievances. Appellant then experienced depression and anxiety, disabling her for work four times from April 18 to 30, 2002. On May 2, 2002 Mr. Bagrowski disciplined appellant for being absent without leave as her “absences were not covered under FMLA.” Appellant countered that as Mr. Bagrowski was not there when she reported for duty, she went to “pay location 030,” supervised by Mr. Bagrowski’s wife, which is where Mr. Bagrowski would normally send her. He also stated that her FMLA request had been misplaced and she would have to submit another form. Appellant took leave from May 4 to 18, 2002, as she felt unsafe.³ Appellant also alleged that Mr. Bagrowski harassed her on May 21, 2002 about her “time punches,” and on May 23, 2002 for not reporting directly to him, after which appellant requested leave for “work[-]related stress/supervisor harassment.” Mr. Bagrowski instructed appellant orally and in a certified letter not to return to work without medical documentation that she “suffered from stress.”

Appellant alleged that on May 29, 2002 at 3:00 p.m., Mr. Bagrowski suspended her building access and had security personnel escort her to the medical unit. She alleged that as Mr. Bagrowski refused to lift the suspension after she was cleared, a district postal official lifted the suspension, but Mr. Bagrowski later renewed it. On May 29, 2002 at 3:11 p.m. Mr. Bagrowski called appellant in for disciplinary action related to her attendance. Appellant was temporarily denied access to the employing establishment on May 30, 2002. Later that evening Mr. Bagrowski stated that the disciplinary action against her would proceed to the next level as there was “not a FMLA” on file. On May 31, 2002 at 10:15 p.m. appellant alleged that

² In a second July 15, 2002 letter, the Office requested that the employing establishment provide additional information regarding appellant’s work duties and the accuracy of her allegations. In a July 17, 2002 slip, Dr. Burdick limited appellant to a “sitting job only,” with no lifting, pushing or pulling over 10 pounds. In an August 22, 2002 slip, Dr. Burdick extended these restrictions for six months. In a September 3, 2002 letter, the Office advised appellant that her claims for compensation for the period July 13 to August 9, 2002, were not yet payable, as she had not yet submitted medical evidence containing a complete, accurate history of injury, a definite diagnosis and medical rationale explaining a causal relationship between work factors and the claimed emotional condition.

³ Appellant stated that she filed an Equal Employment Opportunity complaint against Mr. Bagrowski and planned to file one against Mrs. Bagrowski. However, there are no copies of record of either complaint.

she “suffered a severe anxiety attack” at work and returned home. Her husband telephoned the employing establishment, explaining that appellant had “passed out and some[one] needed to clock [her] out.” Appellant called in sick on June 1, 2002 and due to work restrictions, was subsequently assigned to Mrs. Bagrowski’s unit.⁴ Appellant alleged unspecified “spousal retaliation” and harassment by Mrs. Bagrowski.

In a November 2, 2002 response, Mr. Bagrowski asserted that on May 21, 2002 appellant was “late punching in” and he advised her to keep a regular schedule, that on May 23, 2002 he “confronted” appellant as she “punched in at another location in the building and did not report to her assigned work area for 20 minutes.” He stated that appellant then alleged harassment and went home. Mr. Bagrowski stated that he advised her verbally and in a certified letter to provide medical documentation of a stress condition. He further noted that when appellant returned to work on May 29, 2002 her clearance was temporarily suspended until she submitted medical information to the nurse’s unit, explaining that this was “standard Operating Procedure for *all* employees.” (Emphasis in original.) Mr. Bagrowski stated that appellant was disciplined for irregular attendance as she failed to submit a FMLA form after a “reasonable amount of time.” He denied receiving any notification from appellant’s husband on May 31, 2002 noting that appellant failed to file a leave request prior to leaving work. Mr. Bagrowski noted that appellant may have called in on June 1, 2002 but that she was still required to submit medical documentation to support her work absence.⁵

By decision dated November 15, 2002, the Office denied appellant’s claim on the grounds that she failed to establish any compensable factors of employment. The Office accepted as factual but not compensable that appellant was removed from her bid position on April 17, 2002 that Mr. Bagrowski spoke with appellant on May 21 and 23 2002 about her time punches and about reporting directly to him at the proper location, requested medical documentation on May 23, 2002 supporting the April 12 to 13, 2002 work absence, requested a second copy of an FMLA form and denied appellant access to the building on May 29, 2002 pending medical documentation. The Office found that these were all administrative matters and that no error or abuse was shown. The Office also accepted that appellant’s husband called the employing establishment on May 31, 2002 stating that someone needed to clock out for appellant. The Office did not accept as factual that Mr. Bagrowski committed error or abuse when meeting appellant on March 10, 2002 or regarding her annual leave request, that he acted maliciously when appellant called in sick following nine days of annual leave or when she failed to submit a leave request before leaving on May 31, 2002 or that she was harassed by Mrs. Bagrowski. Appellant filed her appeal with the Board on February 20, 2003.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

⁴ In an August 23, 2002 letter, the employing establishment noted that appellant “stated that she asked her [physician] for work restrictions so she would be moved to a different work unit, away from her supervisor.”

⁵ On November 7, 2002 the employing establishment offered appellant a limited-duty position as a modified clerk, with restrictions of “[s]it down job only,” with no lifting over 10 pounds. A supervisor noted that appellant would not sign the form to accept or refuse the position.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the scope of coverage of the Federal Employees' Compensation Act.⁷ On the other hand where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.⁸

Appellant attributed the claimed emotional condition, in part to Mr. Bagrowski's requirement that she report to him in person after clocking in as of March 27, 2002. This requirement pertains to supervisory monitoring of work activities, which is an administrative function of the employer not considered to be within the performance of duty.⁹ However, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered. Nevertheless, a claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ In this case, the Board finds it was reasonable for appellant's supervisor to require that she report to him at the beginning of the work shift. Appellant did not provide witness statements or other evidence corroborating her allegations that this requirement was imposed abusively or in error. Thus, she has not established a compensable factor of employment in this regard.

⁶ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Brian H. Derrick*, 51 ECAB 417 (2000).

¹⁰ *Andrew J. Sheppard*, 53 ECAB ____ (Docket No. 00-1228, issued October 15, 2001).

¹¹ *Myrna Parayno*, 53 ECAB ____ (Docket No. 01-1101, issued June 12, 2002).

Appellant also attributed her condition to Mr. Bagrowski's April 16, May 23 and 24, 2002 requests, for medical documentation of work absences and for a second copy of an FMLA form that had been misplaced.¹² Mr. Bagrowski acknowledged that he made these requests, explaining that appellant was required to provide such documentation. The Board has held that matters pertaining to use of leave are administrative functions of the employer not considered to be within the performance of duty unless error or abuse is shown.¹³ In this case, the Board finds that it was reasonable for Mr. Bagrowski to apply the policy that medical work absences required appropriate documentation. As appellant has not demonstrated any error or abuse regarding these leave matters, she has not established a compensable factor in this regard.

Appellant also attributed her condition, in part, to being removed from her bid position on April 17, 2002 and being moved to another pay location. The Board has held that in the absence of demonstrated error or abuse, removing a worker from an assigned job and transferring the worker to another position is an administrative decision, which does not directly involve an employee's ability to perform work duties, but rather constitutes an employee's desire to work in a different position.¹⁴ Appellant did not submit evidence indicating that she was entitled to retain her bid position, or that the removal and transfer otherwise constituted error or abuse. Thus, appellant has not established the removal and transfer as a compensable factor of employment.

Appellant also attributed the claimed emotional condition, in part, to disciplinary discussions with Mr. Bagrowski on May 2, 29 and 30, 2002 related to her attendance. Mr. Bagrowski acknowledged that he imposed an unspecified disciplinary measure as appellant failed to document her work absences. However, disciplinary matters are considered administrative functions of the employer and not considered within the performance of duty.¹⁵ Appellant did not provide evidence indicating that the disciplinary discussions or any measures imposed were in error, or constituted abuse. Therefore, she has not established a compensable factor in this regard.

Appellant also attributed her condition, in part, to Mr. Bagrowski suspending her access to the employing establishment on May 29 and 30, 2002, pending a medical clearance and required security personnel to escort her to the health unit. She also alleged that a district postal official lifted the suspension, but that Mr. Bagrowski reinstated it. He confirmed that he temporarily suspended appellant's access to the building on May 29, 2002 until she was cleared by the medical unit to return to work, explaining that this was the standard procedure applicable to all employees. Attendance matters are considered administrative functions of the employer

¹² Insofar as appellant attributed her emotional condition to the employing establishment misplacing her initial FMLA request, the record contains Dr. Burdick's June 10, 2002 FMLA certification form covering the period May 23 to 27, 2002. However, there are no copies of record of FMLA documentation for any other time period, or of the request form itself. Appellant has not provided evidence suggesting that the employing establishment deliberately lost the FMLA form, or that there was other error or abuse involved. As the processing of the FMLA leave request is an administrative matter and no error or abuse is shown, appellant has not established a compensable factor of employment in this regard.

¹³ *James P. Guinan*, 51 ECAB 604 (2000).

¹⁴ *Felix Flecha*, 52 ECAB 268 (2001).

¹⁵ *Roger Williams*, 52 ECAB 468 (2001).

not within the performance of duty unless error or abuse is shown.¹⁶ In this case, Mr. Bagrowski explained that he followed a standard personnel procedure in requiring appellant to report to the medical unit for clearance before returning to work. The Board finds that this was a reasonable exercise of administrative discretion and that no error or abuse was shown. Appellant submitted insufficient factual evidence concerning her allegations of being denied access on May 30, 2002 or that a district postal official intervened. Thus, appellant has not established the suspension of access to the employing establishment as a compensable factor of employment.

Appellant also alleged a general pattern of harassment by Mr. Bagrowski, including speaking in an offensive manner on March 10, 2002 sighing and rolling his eyes on March 14, 2002 remarking on April 9, 2002 that she called in sick after nine days of leave, harassing her on May 21, 2003 about her adherence to work schedules and harassing her on May 23, 2002 regarding not reporting directly to him as instructed. Mr. Bagrowski confirmed that he spoke to appellant on May 21, 2003 about her attendance as she had clocked in late. The Board notes that unfounded perceptions of harassment do not constitute an employment factor and that mere perceptions are not compensable under the Act.¹⁷ In the present case, appellant has not submitted sufficient evidence to support a pattern of harassment, or of hostile behavior by employing establishment officials. Appellant has not shown that Mr. Bagrowski's May 21, 2003 remarks to her about adherence to her work schedule constituted harassment. Also, she did not submit witness statements or other evidence corroborating her account of the March 10, 14, April 9 or May 21, 2003 incidents. Appellant also alleged unspecified harassment and retaliation by Mrs. Bagrowski, but did not provide dates or descriptions of any specific incidents of harassment, or evidence corroborating that any harassment occurred. Thus, appellant has not established harassment as a compensable factor of employment.

Consequently, appellant has not established that she sustained an emotional condition in the performance of duty as she has not substantiated any compensable factors of employment.

¹⁶ *James P. Guinan*, *supra* note 13.

¹⁷ *Kathleen D. Walker*, 42 ECAB 603 (1991).

The decision of the Office of Workers' Compensation Programs dated November 15, 2002 is hereby affirmed.

Dated, Washington, DC
October 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member