

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HELEN D. TURNER and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 03-1074; Submitted on the Record;
Issued October 15, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On July 24, 2001 appellant, then a 50-year-old modified letter carrier, filed a notice of occupational disease alleging that she was under stress at work as a result of being harassed by management in retaliation for a work-related knee injury sustained in 1997. The record indicates that appellant was assigned a modified job for her knee injury and last worked on June 26, 2001. Appellant alleged that following her work-related injury, she intermittently missed work due to pain and swelling of her right knee. She stated that the employing establishment refused to grant her requests for sick leave for medical appointments and instead charged her as absent without leave. She alleged that she was subjected to numerous changes in her work schedule and duty assignments, which created financial problems for her and resulted in emotional stress.

In a routing slip dated August 14, 2001, A.L. Hicks, a union representative, indicated that appellant had complained to him several times that she was under financial stress as a result of shortages on her paychecks from absent-without-leave charges. He noted that she was also upset because she had experienced a death in the family.

In a memorandum dated August 14, 2001, appellant's supervisor, Lonzetta Tennyson, indicated that she had counseled appellant concerning her attendance and failure to call in to request leave from work on May 30, 2001. She related that appellant told her that she had not felt like notifying the employing establishment on May 30, 2001 that she intended on being absent because she was dealing with other personal problems that day. Ms. Tennyson stated that appellant described being depressed over the recent death of her brother and had complained that her pay was messed up so she was unable to afford to attend the funeral, which was out of state. Ms. Tennyson alleged that appellant's paycheck problems stemmed from her failure to timely call in to work to request annual or sick leave or to inform the employing establishment that she was seeking leave related to a work injury. She confirmed that appellant had been given absence

without leave for May 30, 2001. Ms. Tennyson noted, however, that appellant's leave charges were corrected when proper medical documentation was received.

In a letter dated August 24, 2001, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish her claim, noting that it was her burden to provide a detailed explanation of the exact work factors that she alleged caused her emotional condition. Appellant, however, did not respond to the Office's letter and provided no additional information.

In a decision dated February 6, 2002, the Office denied appellant's claim on the grounds that she failed to establish a compensable factor of employment.

Appellant subsequently requested a hearing, which was held on October 23, 2002. She testified that she returned to work on January 10, 2001 following knee surgery and alleged that the employing establishment incorrectly placed her on absent-without-leave status when she had submitted leave forms requesting sick or annual leave. She related that she had problems with her paychecks since 1998, at which time the employing establishment began to misrepresent the amount of leave available to her. Appellant stated that she was unable to attend her brother's funeral in April 2001 because she had not received sufficient paychecks. She testified that she was also threatened with foreclosure in April 2001 and that her car was repossessed in June 2001.¹

Appellant also presented testimony from two witnesses. Terry Ferrel, a coworker, stated that during the first part of 2002 he witnessed Barbara Rosebud "hovering" over appellant making sure she was busy doing something all the time. Bobby Walker, a union representative, stated that the employing establishment was always giving appellant a hard time about her paycheck. He related that appellant was depressed and would often call him to complain about the treatment she was receiving from management.

In a decision dated December 10, 2002, an Office hearing representative affirmed the Office's February 6, 2002 decision. By letter dated March 14, 2003, appellant requested reconsideration and appealed to the Board. In a decision dated April 10, 2003, the Office denied appellant's request for reconsideration, finding that appellant had failed to submit evidence or argument to warrant a merit review of the record.

The Board initially finds that as the Office's April 10, 2003 decision was issued after the Board docketed appellant's appeal on March 31, 2003, the Office's decision is null and void.²

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing

¹ Appellant also presented copies of her 3971 leave forms and pay slips.

² See *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990); *Edward M. Beebe*, 34 ECAB 982 (1983).

that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.³

Workers' compensation law is not applicable 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 regular or specially assigned work duties or a requirement imposed by the employment, the disability are situations, when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Federal Employees' Compensation Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.⁵ However, the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing with the claimant.⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷

Appellant alleged that her emotional condition was caused by unjust treatment she received from management after a work-related knee injury. She claimed that she was harassed by management when she missed work and was told she did not have enough sick and annual leave available for her to use for medical treatment. The Board has carefully reviewed the record and finds no factual support for this allegation. Appellant's supervisor explained that appellant's problems with absent-without-leave charges stemmed from her inability to timely request annual or sick leave prior to medical appointments. On May 30, 2001 the record indicates that appellant chose not to call in sick because she was dealing with personal matters at home. Appellant failed to call in sick on May 30, 2001 and the Board finds that the employing establishment acted reasonably in placing her as absent without leave. Although appellant may have suffered financial difficulties arising from reductions in her paychecks for the absent-without-leave charges, she has not established that the employing establishment acted abusively or in error in placing her as absent without leave as described. Appellant's failure to comply with the administrative practices required by the employing establishment resulted in her being

³ *Claudio Vazquez*, 52 ECAB 496 (2001); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Roger Williams*, 52 ECAB 468 (2001); *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁵ *See Felix Flecha*, 52 ECAB 268 (2001).

⁶ *See Williams*, *supra* note 4.

⁷ *James E. Norris*, 52 ECAB 93 (2000); *Ruth S. Johnson*, 46 ECAB 237 (1994).

absent without leave, most notably on May 30, 2001. The fact that the employing establishment later corrected the absent-without-leave charges upon receipt of medical documentation does not establish that the absent-without-leave charges were made in error or that management acted abusively towards appellant in the administrative action.⁸

Appellant also contended that her emotional condition was due, in part, to constant changes in her work schedule and job assignments. The Board notes that assignment of work is an administrative or personnel matter of the employing establishment and coverage can only be afforded where there is a showing of error or abuse.⁹ Appellant's emotional condition is not compensable when it arises as a result of her desire to work in a particular environment or on a particular work shift.¹⁰ The evidence of record is insufficient to establish error or abuse in the work assignments made in this case.

The Board also is not persuaded that the employing establishment acted unreasonably in monitoring appellant's work duties. The Board has held that it is an administrative function of the employer to review an employee's work performance and to monitor the activities of the staff.¹¹ Unfounded perceptions of harassment do not constitute an employment factor and mere perceptions of harassment are not compensable.¹² Consequently, the Board finds that appellant failed to allege a compensable factor of employment and is, therefore, unable to establish that she sustained an emotional condition in the performance of duty.¹³

⁸ See *Sherry L. McFall*, 51 ECAB 436 (2000).

⁹ *Ernest St. Pierre*, 51 ECAB 623 (2000); *Robert W. Johns*, 51 ECAB 137 (1999).

¹⁰ See generally *Ernest J. Malagrida*, 51 ECAB 287 (2000).

¹¹ See generally *Brian H. Derrick*, 51 ECAB 417 (2000).

¹² *Ronald Potter*, 51 ECAB 688 (2000).

¹³ 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 (1992).

The December 10, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 15, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member