U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATSY A. ROBERTS and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

Docket No. 03-1832; Submitted on the Record;
Issued October 15, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On November 10, 2001 appellant, a 40-year-old part-time clerk and mail carrier, filed an occupational disease claim, alleging that she had developed an emotional condition caused by factors of her federal employment. She stated that she became aware that her emotional condition was causally related to her employment as of August 30, 2001.

In a report dated November 14, 2001, Dr. Hermino B. Balderama, Board-certified in internal medicine, stated:

> "On August 30, 2001 [appellant] presented to the office with severe hypertension, chest pain, and agitation apparently after she was confronted by her supervisor. Her acute symptoms resulted in an emergent admission to Methodist North Hospital for work up of the chest pain and to manage her severe hypertension. She was also markedly agitated and anxious. She was later discharged in satisfactory condition; however, she needed close outpatient followup and eventually allowed back to work on October 13, 2001."

By letter dated December 21, 2001, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant did not submit any additional evidence.

By decision dated March 11, 2002, the Office found that fact of injury was not established, as the evidence of record did not establish that an emotional condition was sustained in the performance of duty.

By letter dated March 24, 2002, appellant requested reconsideration and alleged that her supervisors began harassing her the first day she began working at the employing establishment. She alleged that Supervisor Teresa Agnew was biased against her because of a preexisting dispute with her husband, who had previously worked with Ms. Agnew. According to appellant, Ms. Agnew accosted her on her first day of work and stated, "Tell your husband, pay back is Hell." Appellant alleged that during the following year Ms. Agnew and Cathy Blakely, another supervisor, engaged in a pattern of harassment toward her. She claimed that they spoke to her in a derogatory manner, made unsolicited remarks regarding matters unrelated to her employment and humiliated her by constantly telephoning her office. As a result of these factors, appellant alleged she experienced severe emotional stress.

Appellant alleged that the harassment culminated on August 30, 2001, when she was asked by another supervisor to report for work at 8:30 a.m. Although appellant reported at 8:30 a.m. on that date, she discovered another employee at her workstation and was told by Ms. Agnew that she had not been expected to be at work until 12:00 p.m. When appellant told Ms. Agnew that she had been told by another supervisor to report at 8:30 a.m., Ms. Agnew told her to report to Route 8 and begin casing. Three minutes later, Ms. Agnew called appellant to her office over the intercom and accused appellant of fabricating her statement that another supervisor told her to report to work at 8:30 a.m. Appellant challenged Ms. Agnew's assertion, a verbal confrontation ensued, and Ms. Agnew again told appellant not to report until 12:00 p.m. At that point, appellant felt her blood pressure rising and began to experience chest pains. She left work and was taken to the hospital.

Appellant stated that, when she returned to work several weeks later, she was harassed again by Ms. Blakely, who demanded to see her hospital medical records, and by Ms. Agnew, who told appellant she was sick and tired of having to wait for her and shouted at her to get off her clock.

In a statement received by the Office on April 11, 2002, Judith Savage, a coworker of appellant, who worked in the occupational health office, stated that Ms. Blakely made several inquiries pertaining to appellant's hospital visit on August 30, 2001. Ms. Savage stated that Ms. Blakely asked her whether appellant had actually gone to the hospital on August 30, 2001, whether the hospital had determined a diagnosis of appellant's condition on that date, and whether the hospital had recommended a specific date appellant should return to work. Ms. Savage stated that these questions were inappropriate and constituted a violation of the rules regarding employee privacy. She further stated that Ms. Blakely became angry and confrontational when she refused to answer these questions.

In a statement dated June 20, 2002, Ms. Agnew stated that she told appellant "pay back is hell" but noted that she was only joking and that there was no significance to this comment. She also stated that she bore no personal animus toward appellant. With regard to the August 30, 2001 incident, Ms. Agnew asserted that appellant was scheduled to report to work at noon and that she had telephoned the evening supervisor, Sandra Gaggett, who denied telling appellant to

report at 8:30 a.m. Ms. Agnew stated that appellant became annoyed when she told her that the schedule had been properly posted and contradicted appellant's assertion that she had been told to report at 8:30 a.m. Ms. Agnew instructed appellant to return at her assigned time, 12:00 p.m., whereupon appellant left the worksite. Ms. Agnew asserted that she was unaware that appellant had left for the hospital until she did not appear for work at 12:00 p.m.

Ms. Blakely submitted a June 20, 2002 statement in which she corroborated Ms. Agnew's account of the events which occurred on August 30, 2001. Ms. Blakely stated that, upon appellant's return to work, she asked appellant for medical documentation regarding her hospital visit and treatment. She approached Ms. Savage to obtain documentation pertaining to appellant, but indicated that she was acting in her administrative capacity in the same manner as she would with any other employee who had been hospitalized after leaving the workplace.

Appellant submitted a June 23, 2002 statement from coworker Richard L. Fitzpatrick; a June 23, 2002 statement from union steward Hellene F. Anderson; a June 27, 2002 statement from coworker Felicia Scullark; a July 2, 2002 statement from coworker Irma Johnson; a July 1, 2002 statement from coworker Stephanie Alvarado; and a July 2, 2002 statement from union steward Felippa Scala.[1] In these statements, these employees alleged that the employing establishment harassed appellant, treated her in a disrespectful, threatening, derogatory and discriminatory manner, made insulting remarks toward her, and created a stressful work environment.

In a statement dated July 16, 2002, Ms. Savage noted that Ms. Blakely had become arrogant and rude when Ms. Savage informed her of the privacy act regarding employee's confidential medical file. Ms. Savage stated that Ms. Blakely was so disrespectful that she reported the incident to her supervisor and to Ms. Blakely's supervisor.

By decision dated August 26, 2002, the Office affirmed the March 11, 2002 decision denying compensation based on an emotional condition. The Office modified the previous decision, finding that appellant did establish a compensable factor of employment with regard to the statement made by Supervisor Agnew, "pay back is hell." The Office, however, found that the medical evidence submitted by appellant, the November 14, 2001 report from Dr. Balderama, was not sufficient to establish that the accepted compensable work factor caused or contributed to her emotional condition.

By letter dated January 10, 2003, appellant requested reconsideration. Appellant submitted an Equal Employment Opportunity (EEO) request for Ms. Agnew's witness affidavit dated September 23, 2002.

By decision dated March 6, 2003, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

[1] The record also includes a June 24, 2002 statement from another coworker of appellant's whose signature is illegible.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.[2] There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.[3]

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 Federal Employees' Compensation Act.[4] On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.[5]

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that her supervisors engaged in harassment. Appellant has alleged, in general terms, harassment from her supervisors, but she has not provided sufficient evidence to substantiate her allegations.[6] Appellant submitted several statements from coworkers who alleged that appellant was harassed and treated unfairly at the employing establishment. These allegations, however, were refuted by management, and none of appellant's coworkers' statements provided specific dates on which the witnessed incidents of harassment or mistreatment occurred. To that end, appellant failed to establish that her supervisors threatened or verbally abused her or otherwise ridiculed her during the periods and dates she alleged these episodes to have occurred. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work and do not support her claim for an emotional disability. For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Office reviewed appellant's specific allegations of harassment, abuse and mistreatment, which allegedly occurred over several years, and found that they were not substantiated. The statements from appellant's coworkers do not establish that her supervisors disparaged appellant or otherwise ridiculed her during the periods and dates she alleged these

[2] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[3] *See Ruth C. Borden*, 43 ECAB 146 (1991).

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

[5] *Id.*

[6] *See Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.)

episodes to have occurred. Nor do the statements of the coworkers substantiate appellant's allegations that her supervisors created a hostile work environment.[7]

The Board further finds that the administrative and personnel actions taken by management in this case do not establish agency error, and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.[8] In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. In addition, the evidence of record indicates that the employing establishment was not acting in an unreasonable manner by asking her to leave her workstation and return at noon on August 30, 2001. Appellant has submitted insufficient evidence indicating that the employing establishment did not act upon the reasonable belief that her schedule for the day had been posted and that she was not authorized to begin work until 12:00 p.m. on that date. Nor has appellant provided any evidence that the employing establishment acted unreasonably or committed error in discharging its administrative duties with regard to this incident. Further, although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[9] While Ms. Agnew acknowledged that she and appellant had a verbal exchange arising from the conflict regarding appellant's work hours, appellant has not shown how any such isolated comments would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[10]

The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.[11] However, error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.[12] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[13] Regarding appellant's allegation that Ms. Blakely abused her authority by asking Ms. Savage for

[7] *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

[8] *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

[9] *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

[10] *See, e.g., Alfred Arts*, *supra* note 8 and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self- generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[11] *Elizabeth Pinero*, 46 ECAB 123 (1994).

[12] *Margreate Lublin*, 44 ECAB 945 (1993).

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

documentation appellant has submitted no evidence indicating the employing establishment committed error or abuse or that its actions in this instance were unreasonable. Ms. Blakely stated that she was attempting to obtain documentation corroborating that appellant left work on August 30, 2001 to obtain medical treatment, which was required in this instance because appellant left the worksite without her knowledge or prior permission. Thus, she was acting within her administrative authority and did not commit error or abuse.[14] Accordingly, a reaction to such factors did not constitute an injury arising within performance of duty. The Office properly concluded that in the absence of agency error or abuse such personnel matters were not compensable factors of employment.

Although appellant has established a compensable factor of employment pertaining to Ms. Agnew's remark, "pay back is hell," the Board finds that the medical evidence of record is not sufficient to establish that this caused or contributed to her emotional condition. Dr. Balderama made brief mention of the fact that appellant had a confrontation with her supervisor on August 30, 2001 and subsequently experienced hypertension, chest pain, and agitation. He also noted that she had been treated at Methodist North Hospital for chest pain and severe hypertension. However, appellant indicated that the statement "pay back is hell" was uttered by Ms. Agnew when appellant first commenced employment for the employing establishment. This statement, therefore, while compensable, was made more than a year and a half prior to August 30, 2001, when she sought hospitalization. Dr. Balderama's report thus did not contain a rationalized medical opinion, based on a proper factual and medical background, explaining his opinion on causal relationship or otherwise relating his diagnosis to the factor found compensable in this case. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[15] Dr. Balderama does not demonstrate a complete or accurate factual background or provide an opinion relating appellant's August 30, 2001 confrontation with her supervisor as a causative factor to her diagnosed emotional condition. For these reasons, the Board finds the report of Dr. Balderama insufficient to establish that appellant sustained an emotional condition causally related to her compensable work factor.

The Board further finds that the Office properly denied appellant's request for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[16] Evidence that repeats

[14] *Drew A. Weismuller*, 43 ECAB 745 (1992); *Kathi A. Scarnato*, 43 ECAB 220 (1991).

[15] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[16] 20 C.F.R. § 10.606(b)(1). *See generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[17]

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The only evidence appellant submitted, the EEO affidavit, constitutes a request by another government agency to interview Ms. Agnew and contains no new factual evidence purporting to establish another compensable work factor.[18] It is therefore not pertinent to the issue on appeal; *i.e.*, whether appellant sustained an emotional condition in the performance of duty. Further, appellant did not submit any additional medical evidence with her request for reconsideration demonstrating that the employment factor found compensable in this case caused or contributed to her emotional condition. Thus, she failed to submit evidence sufficient to warrant reopening the case for a merit review. Additionally, appellant's January 10, 2003 letter failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Appellant argued that the Office's acceptance of one employment factor and the medical evidence of Dr. Balderama established her claim, but the Office has already determined that the accepted employment factor considered in conjunction with the medical evidence of record did not show the existence of an employment-related condition. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits. The Board therefore affirms the Office's March 6, 2003 decision.

[17] *Howard A. Williams*, 45 ECAB 853 (1994).

[18] Appellant alleged that Ms. Agnew did not respond to the affidavit, but she did not adequately explain the relevance of this claim.

The decisions of the Office of Workers' Compensation Programs dated March 6, 2003 and August 26, 2002 are affirmed.

Dated, Washington, DC
October 15, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member