

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOSCA P. BRENNEMAN and U.S. POSTAL SERVICE,
POST OFFICE, Fresno, CA

*Docket No. 03-1895; Submitted on the Record;
Issued October 16, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On March 19, 2001 appellant, then a 52-year-old letter carrier, filed an occupational disease claim alleging that she sustained an emotional condition in the performance of duty. She alleged that her stress, depression and anxiety were the result of daily harassment and belittlement by her supervisor, Chris Perez. Appellant stated that she first became aware of her illness in December 1996 and she realized her condition was employment related on December 26, 2000.

In a separate statement, appellant indicated that her supervisor, Mr. Perez, would force her to work overtime with the threat of discipline, despite appellant having a doctor's note to the contrary. She also referred to a December 27, 2000 incident, when he refused to provide her assistance and then exploded to the point of foaming at the mouth, when she indicated that she could not go against her doctor's orders. Appellant stated that Mr. Perez kept returning to her station in order to embarrass and shame her. On one occasion he told her to get away and out of his sight. Appellant further indicated that Mr. Perez made her feel that she was not doing her job and it could be done in a shorter period of time.

In a March 26, 2001 statement, Mr. Perez described an incident that occurred on December 27, 2000 in which appellant requested auxiliary assistance with her route and, when she was advised that her mail volume did not justify assistance, she screamed and stomped her feet. Mr. Perez indicated that appellant threw the mail on the floor and her keys towards him, which hit him in the head and she left. He also stated that he had not singled out appellant or treated her unjustly or unfairly.

In a November 3, 2000 statement, Mr. Sandoval described an incident that occurred when Mr. Perez asked appellant to clean up her route on November 2, 2000. He indicated that appellant became visibly upset and told Mr. Perez that she could not do it and then she started yelling and cursing and left for another part of the building.

Dan McBride also provided a November 3, 2000 statement, indicating that the previous day he heard appellant scream at Mr. Perez that she was “sick of you doing this to me,” she subsequently cursed and walked away. The employing establishment also included several statements indicating that appellant yelled, shoved mail and threw keys at Mr. Perez.

In a September 27, 2001 decision, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that the evidence of record failed to establish that she sustained the claimed condition in the performance of duty. The Office found that the December 27, 2000 incident wherein appellant’s supervisor told her to get away and out of his sight occurred at the time and place alleged, but that it was not a compensable factor of employment. The Office also found that appellant failed to substantiate her claims of being told that she was not up to par, overworked, that her route could be performed in less time and that her supervisor exploded.

By letter dated June 5, 2002, appellant, through her representative, requested reconsideration and submitted additional information, including an October 18, 2001 statement from Albert Hernandez and an undated statement from Creola Kennedy. Appellant also submitted an April 11, 2002 report from her psychiatrist, Dr. Robert P. Withrow.

In a September 5, 2002 merit decision, the Office denied modification of the September 27, 2001 decision.

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

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

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to one’s employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview 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 is deemed compensable. Disability is not compensable, however, when it results from factors such

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis, in fact, for the claim by supporting her allegations with probative and reliable evidence.³

In the instant case, appellant indicated that her supervisor yelled at her and walked away from her. In support of her claim, she submitted statements from Mr. Hernandez and Ms. Kennedy. Mr. Hernandez indicated that appellant's supervisor, Mr. Perez, yelled at appellant on two occasions and walked away from her, but he offered no specific information as to when this took place. Ms. Kennedy indicated that Mr. Perez yelled at appellant often to the point of making her cry. She referred to the December 27, 2000 incident, wherein Mr. Perez denied assistance to appellant and was very loud and finally requested that she leave the floor and go home. Ms. Kennedy noted that appellant threw her stuff on the floor and left and she specifically stated that appellant did not throw her keys at Mr. Perez.

The Board has recognized that verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances. This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.⁴ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.⁵ In the instant case, appellant has not shown how her interactions with Mr. Perez, particularly the December 27, 2000 incident, rise to the level of verbal abuse.⁶ Mr. Perez denied treating appellant inappropriately. He also submitted several statements from witnesses, who heard appellant yelling at him, saw her shove the mail and throw her keys at him.

Appellant also alleged that she was overburdened and subjected to unreasonable time pressures in delivering the mail and did not receive adequate support to complete her route. Under certain circumstances an emotional reaction to a situation where an employee is trying to meet her position requirements is compensable.⁷ However, appellant has not provided sufficient factual evidence to establish the substance of her claim. She did not submit evidence showing that her mail route was overburdened or that she was not provided with adequate resources to

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *Fred Faber*, 52 ECAB 107, 109 (2000).

⁵ *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

⁶ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) 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).

⁷ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

complete her mail route. Although appellant provided a statement from Ms. Kennedy, who opined that appellant was overworked on her route, this is insufficient to support appellant's claim. Mr. Perez indicated that appellant's route did not require assistance and the customer service manager supported this decision as workload pressures were decreased due to low volume and no extra demands were placed on appellant.

Although the assignment of work duties is generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁸ As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.⁹ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁰ In this instance, appellant has not demonstrated error or abuse on the part of the employing establishment with respect to her particular route assignment and determinations regarding the need for auxiliary assistance.

Appellant's allegation that she was harassed by her supervisor likewise has no factual support in the record. A claimant's own feeling or perception that a form of criticism or disagreement 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 abusive. Appellant included Ms. Kennedy's statement that Mr. Perez put pressure on her and that he was loud and demanding. However, this is insufficient to establish harassment. Complaints about the manner, in which a supervisor performs his duties or the manner, in which a supervisor exercises his discretion, fall as a rule, outside the scope of coverage provided by the Act.¹¹ This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.¹² Appellant's supervisor denied treating her inappropriately and supplied several witness statements where appellant was seen shouting at Mr. Perez and throwing things.

Regarding appellant's allegation of denial of her request for a new route that was less demanding, she included Ms. Kennedy's statement, wherein she opined that appellant's route was very difficult to keep to eight hours a day. The Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve appellant's ability to perform her

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 *Janet I. Jones*, *supra* note 8.

¹⁰ *Id.*

¹¹ *Marguerite J. Toland*, *supra* note 5.

¹² *Id.*

regular or specially assigned work duties, but rather constitute her desire to work in a different position.¹³ Thus, appellant has not established a compensable employment factor in this respect.

Inasmuch as appellant failed to implicate any compensable employment factors, the Office properly denied her claim without addressing the medical evidence of record.¹⁴

The September 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 16, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹⁴ *See Garry M. Carlo*, *supra* note 1.