United States Department of Labor
Employees' Compensation Appeals Board

KAREN E. PORTER, Appellant	)	
and	)	**Docket No. 03-71**
	)	**Issued: April 28, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, Employer	)	

Appearances:
Karen E. Porter, pro se
Joanna Hull, Esq., for the Director

Oral Argument March 4, 2004

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 11, 2002 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 9, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition case.

ISSUE

Whether appellant established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 6, 2000 appellant, a 37-year-old clerk, filed an occupational disease claim alleging that her stress was due to her federal employment. Appellant stopped work on October 21, 2000 and did not return.[1] In a November 15, 2000 statement, appellant attributed her stress to sexual harassment; being pulled off her machine every 15 minutes; being watched

[1] Appellant's employment was terminated on January 12, 2001 when her temporary appointment expired.

while working; being supervised by 3 or more supervisors; having her life and the lives of her family threatened; a male coworker made comments about the size of her breasts; performing the duties of a mailhandler instead of a clerk; men asking her for sex; and being harassed by her supervisor and management.

Appellant submitted a copy of an October 22, 2000 Equal Employment Opportunity (EEO) complaint. She alleged sexual harassment, discrimination for being a heterosexual female, retaliation and mental abuse. In an attachment she detailed various incidents relating to harassment and unfair treatment by coworkers and supervisors. She alleged that a Mrs. Wright, a supervisor, ran over her ankle with A.B.C. equipment on October 10, 2000, that her supervisor refused to file an incident report and she was placed on absent without leave. Appellant alleged that an M. Braxton, a coworker, used profanity and threatened her life and the lives of her family. On October 13, 2000 appellant alleged that her supervisor was told to terminate her. She alleged that Joan Lindsay, a coworker, made several sexual passes at her. She also alleged that William Choice, a coworker, sexually harassed her by propositioning her and urging her to have sex with him. She alleged "he came back with an (erection)" and this was not the first incident with him. She alleged that John Smallwood, a coworker, had sexually harassed her for the past two months and the employing establishment did nothing to stop the harassment.

In a November 28, 2000 report, Jennene Daniels, a licensed clinical social worker, indicated that appellant had been in treatment since October 18, 2000 and noted the diagnoses of bipolar disorder and an episode of depression. Ms. Daniels concluded that appellant was totally disabled from work due to her emotional condition.

In a December 14, 2000 letter, Atiyah Abdullah, appellant's supervisor, controverted her claim. Ms. Abdullah stated that appellant never reported any job-related stress to her and that prior to the October 21, 2000 claim she was being terminated for unsatisfactory attendance. The supervisor noted and that an investigation had not supported appellant's allegation that her life had been threatened by a coworker on October 20, 2000.

In a February 6, 2001 letter, the Office advised appellant of the additional factual and medical evidence needed to establish her claim. She was allotted 30 days to submit the requested evidence.

In a February 16, 2001 letter, appellant, responded to the Office's request for additional information and submitted a January 3, 2001 termination letter, a copy of her emergency transport on October 21, 2000 for attempted suicide and a copy of an EEO complaint. She listed names of coworkers who could verify her allegations, but provided no supporting statements from these individuals. She alleged that Mr. Braxton threatened her life on October 20, 2000 and the employment establishment placed both of them on emergency suspension without pay pending an investigation. She also alleged that the employing establishment wrongly lost her request for family medical leave. Appellant alleged that the employing establishment delayed the filing of her workers' compensation claim. Appellant alleged that she was watched while performing her duties. She alleged that she was always being assigned mailhandler work when she should have been rotated on the machines. Appellant alleged that she was forced to work overtime and that she could not refuse any overtime offer or there would be "consequences". Appellant alleged that Mr. Smallwood and Mr. Choice harassed her by following her around and

stated that she complained to her supervisors regarding sexual harassment by Mr. Choice, but that nothing was done.

In a decision dated March 27, 2001, the Office denied appellant's claim on the basis that she failed to establish any compensable employment work factors.

Appellant requested an oral hearing in an April 12, 2001 letter. A hearing was held on February 25, 2002 at which appellant testified. Subsequent to the hearing appellant submitted a March 1, 2001 report by Ms. Daniels, a March 13, 2002 report by Tony Navarro, a licensed medical social worker and an EEO dispute resolution specialist's inquiry report.

On August 28, 2001 appellant was informed that her EEO complaint had been accepted for investigation and that the scope of the investigation would include the following incidents:

> "… (1) on October 13, 2000, MDO Wendy McLlwain told supervisors to terminate you; (2) once or twice a week beginning in June 2000, employee William [C]hoice would approach you making verbal comments about sex, feeling you on your posterior, and propositioned you $100.00 to have sex with him; (3) during July 2000, he caught you in the break area where he made rude remarks about how he would love to be your man, how big your breasts were and he showed you that he had an erection; (4) employee Smallwood sexually harassed you in May 2000, he followed you to every assignment, he would try to hug you and rub against you, he propositioned you with drugs for sex and talked about how big your breasts were; [and] (5) on October 22, 2000 you became aware that you had been placed on emergency suspension after TE Braxton threatened your life, your children's lives and your mother's life on October 20, 2000."

In an August 15, 2001 EEO dispute resolution specialist's interview, Ms. McLlwain denied that appellant made her aware of any sexual harassment allegations and that she informed appellant that her manner of dress was inappropriate. Appellant was taken off the floor on October 13, 2000 for possible termination due to attendance problems. After that date, appellant told employees that she was going to take some employees down with her. Mr. Choice denied ever sexually harassing appellant or propositioning her for sex. Appellant's supervisors, Larry Ball, Ms. Abdullah, Warren Glass and V.C. Rogers, stated that appellant never made them aware of any of the alleged incidents of sexual harassment. Ms. Abdullah stated that she was aware of a problem with Mr. Braxton, which resulted in him being placed on emergency suspension pending an investigation. Appellant was not placed on suspension because she did not return to work. Mr. Glass recalled that appellant was placed on emergency suspension due to a verbal altercation with a coworker. Gloria Taylor, a shop steward, stated that on the date appellant last worked, appellant made her aware of some of the alleged incidents of sexual harassment. However, appellant did not provide any specific dates and Ms. Taylor denied witnessing or hearing any thing as alleged by appellant.

In a decision dated May 7, 2002 and finalized on May 9, 2002, the hearing representative affirmed the March 22, 2001 denial of appellant's claim.[2]

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[4] "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time, when the employee may reasonably be said to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[5]

As the Board observed in the case of *Lillian Cutler*,[6] workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as, when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position. Workers' compensation law does not cover an emotional reaction to an administrative

[2] On appeal to the Board, appellant submitted additional new evidence. As the Office did not consider this evidence in its final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

[6] 28 ECAB 125 (1976).

or personnel action unless the evidence shows error or abuse on the part of the employing establishment.[7]

As a several rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8] In *Kathleen D. Walker*,[9] the employee attributed her emotional disability, in part, to disputes with coworkers. The Board noted that, while established disputes arising from the performance of one's duties may give rise to coverage under the Act, a claimant's unfounded perceptions will not give rise to a compensable factor of employment. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate his or her allegations with probative and reliable evidence.[10]

The Board has underscored that, in claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of her allegations of stress from "harassment" or a difficult working relationship. The claimant for compensation must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived "harassment," abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act. Based on the evidence submitted by the claimant and the employing establishment, the Office is then required to make factual findings, which the Board may review. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace, is to establish a basis in fact for the contentions made, which in turn may be fully examined and evaluated by the Office and the Board.[11]

With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not viewed as the equivalent of "harassment" as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate

[7] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

[8] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

[9] 42 ECAB 603, 608 (1991).

[10] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions that she characterized as harassment actually occurred).

[11] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

and evaluate such matters in the workplace.[12] Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers.[13]

ANALYSIS

In the present case, appellant alleged that she developed stress and anxiety because the employing establishment mishandled her leave requests request for family medical leave and assigned her to mailhandler work and failed to rotate her on the machines. The Board has held that, although the handling of leave requests, attendance matters and schedule changes are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[14] Appellant has submitted insufficient evidence to establish any error or abuse in the employing establishment's handling of her leave requests. The record is devoid of any evidence that employing establishment supervisory personnel acted erroneously or abusively in not rotating her on various machines and in assigning mailhandler work. As no evidence of error or abuse was presented regarding any failure to rotate her on various machines, these alleged actions are not compensable factors of appellant's employment.

Appellant alleged that the investigation into an altercation between her and Mr. Braxton was conducted improperly. She alleged that the employing establishment failed to follow proper procedures in investigating the altercation. Appellant has not provided any evidence, such as witness statements, to show that the investigation was conducted improperly. There is also no evidence that the employing establishment failed to follow its own procedures in the investigation. In a December 14, 2000 letter, Ms. Abdullah, appellant's supervisor, noted that an investigation into alleged threats by Mr. Braxton against appellant and her family were found not to be true. An investigation into allegations of employee misconduct is an administrative function of the employer.[15] And absent evidence of error or abuse, an emotional reaction to such an administrative action is considered self-generated and is not compensable. The Board finds insufficient evidence of error or abuse in the investigation of appellant's complaints of alleged

[12] The Act is remedial in character and the Office has the duty of administering the provisions of the Act with regard to the rights of employees and the intent of congress. *John J. Feeley*, 8 ECAB 576 (1956). The determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Act for disability. Under the Act, for a disability determination, the employee's injury must be shown to be causally related to an accepted injury or factors of employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability under the Act. *See Daniel Deparini*, 44 ECAB 657 (1993); *George A. Johnson*, 43 ECAB 712 (1992); *Constance G. Mills*, 40 ECAB 317 (1988); *Fabian W. Fraser*, 9 ECAB 367 (1957). Findings made by the Merit Systems Protection Board or EEO Commission may constitute substantial evidence relative to the claim to be considered by the Office and the Board. *See Donna Faye Cardwell*, *supra* note 10; *Walter Asberry, Jr*., 36 ECAB 686 (1985).

[13] While racial epithets, disparaging comments concerning national or ethnic origin or sexualized name-calling, jokes or innuendo do not have a place in the workplace, the proper forum for allegations of sexual harassment, discrimination or a hostile work environment are outside the Act. However, such instances may give rise to coverage under the Act, when established by the facts in evidence. *See Abe E. Scott*, 45 ECAB 164 (1993).

[14] *See generally Dinna M. Ramirez*, 48 ECAB 308 (1997); *Lillie M. Hood*, 48 ECAB 157 (1996).

[15] *See Patricia A. English*, 49 ECAB 113 (1997).

threats by Mr. Braxton in October 2000. Appellant's allegations as to the propriety of the investigation against her is not compensable.

Regarding appellant's allegations that the employing establishment mishandled her compensation claim, the Board has generally held that the processing of compensation claims bears no relation to her day-to-day or specially-assigned duties.[16] She has not submitted evidence to establish that the employing establishment deliberately mishandled or delayed filing her compensation claim or committed any error or abuse in its handling of her claim. The Board finds that appellant's allegations relate to administrative or personnel matters, for which she has not established that the employing establishment erred or acted abusively.[17]

Appellant alleged that she was threatened by Mr. Braxton and that he also threatened the lives of her children and mother. Regarding these allegations, the Board notes that the employing establishment investigated the matter and found the threat allegations were unsupported. Appellant's supervisor, Ms. Abdullah, acknowledged that she was generally aware of a problem with Mr. Braxton, which resulted in his being placed on emergency suspension pending the investigation. However, she noted that an investigation into the matter found that appellant's allegations were not verified. Appellant provided no specifics regarding the alleged threats beyond noting that Mr. Braxton threatened her life and the lives of her family. There is no supporting evidence showing that the threats occurred as alleged. Therefore, these allegations are not established as occurring and are consequently not compensable under the Act.

Appellant alleged that Mr. Smallwood and Mr. Braxton, coworkers, sexually harassed her. 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 her regular duties, these may constitute employment factors. 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. In this case, employing establishment supervisory personnel and coworkers denied that appellant was subjected to harassment or discrimination. Appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.[18] Mr. Smallwood denied the allegations made by appellant that he had sexually harassed her. Mr. Ball, Ms. Abdullah, Mr. Glass and Ms. Rogers, appellant's supervisors, all stated that appellant never made them aware of any of the alleged incidents of sexual harassment. Appellant submitted no witness statements or other evidence, except for her allegations to support the instances of sexual harassment. Appellant filed an EEO complaint for sexual harassment by Mr. Smallwood and Mr. Braxton; however, the record contains no final decision on this complaint. She has provided no evidence, such as witness statements, to establish that the alleged harassment and discrimination actually occurred.[19] The Board finds that appellant has not established a

[16] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[17] *See Janet I. Jones*, 47 ECAB 345 (1996).

[18] *See Joel Parker, Sr., supra* note 10 (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[19] *See William P. George*, 43 ECAB 1159, 1167 (1992).

compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant has failed to establish compensable factors of employment and that she sustained an emotional claim arising from compensable factors of her federal employment. Since appellant has not established a compensable factor of employment, it is not necessary to address the medical evidence.[20]

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.[21]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 7, 2002 and finalized on May 9, 2002 is affirmed.

Issued: April 28, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[20] *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).

[21] The Board notes that the decision of an administrative law judge finding that appellant is disabled under the Social Security Act has little evidentiary value in this case. The Board has held that, entitlement to benefits under another federal statute does not establish entitlement to benefits under the Act. *See Dona M. Mahurin*, 54 ECAB ___ (Docket No. 01-1032, issued January 6, 2003); *Freddie Mosley*, 54 ECAB ___ (Docket No. 02-1915, issued December 19, 2002). In determining whether an employee is disabled under the Act, the findings of the Social Security Administration are not determinative of disability under the Act. *See Daniel Deparini*, *supra* note 12.