United States Department of Labor
Employees' Compensation Appeals Board

BRIDGET A. CROSS, Appellant	)	
and	)	**Docket No. 04-302**
	)	**Issued: April 16, 2004**
U.S. POSTAL SERVICE, BMC-80, Secaucus, NJ, Employer	)	

Appearances:
Bridget A. Cross, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 17, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated October 24, 2003, in which an Office hearing representative affirmed an October 29, 2002 decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On August 22, 2002 appellant, then a 35-year-old human resources specialist in the injury compensation office, filed a Form CA-1, traumatic injury claim, alleging that on July 26, 2002 she had been harassed at work and that this caused an acute stress syndrome including migraine headaches and elevated blood pressure. She stopped work on August 5, 2002. In an attached statement, appellant alleged that a union representative verbally harassed her because appellant

refused to give information regarding an employee's injury when appellant did not have the employee's written consent. Appellant stated that the union representative entered her office without permission and was hostile and confrontational.

Appellant also submitted copies of emails between David L. Dion, manager, injury compensation and her dated July 23 and 31, 2002, in which she complained that an employee had interrupted her on July 23, 2002 without an appointment, after which Robin Ware and Gwen Green, union representatives, called her in a threatening and harassing manner. Appellant advised Mr. Dion that she wanted a transfer because the employing establishment was a hostile work environment, which caused her stress. Mr. Dion replied that he needed a signed, written statement concerning the events of July 23, 2002 and that her request for a transfer would be handled separately.

Appellant further submitted an incident report alleging that Ms. Green entered her office on July 26, 2002 and began yelling at her. In a statement regarding the events of July 26, 2002, appellant alleged that Ms. Green became argumentative over the telephone and appellant then terminated the call. Shortly thereafter, Ms. Green entered her office talking in a loud and threatening manner. Appellant asked Ms. Green to leave and when she did not, appellant called security.

Lastly, appellant submitted a disability certificate, in which Dr. Domiciano V. Capitly, an internist, diagnosed acute stress syndrome, migraine headaches and elevated blood pressure and advised that appellant could not work from August 5 to 11, 2002. He stated that she could return to work on August 12, 2002.

The employing establishment controverted the claim and submitted an email dated July 24, 2002, in which Robyn Webb,[1] chief steward, informed Mr. Dion that a mailhandler complained to her about poor service from the injury compensation office. She sought to assist him and called appellant, who spoke in a hostile manner and hung up on Ms. Webb, who asked Mr. Dion to investigate.

By letters dated September 17 and 27, 2002, the Office informed appellant of the type evidence needed to support her claim.[2] Appellant thereafter submitted a number of treatment notes from Dr. Capitly, who on August 5, 2002 noted appellant's complaint of a frontal headache and stated that she had been stressed at work since July 26, 2002. His impression was acute stress reaction. In a September 4, 2002 note, Dr. Capitly noted that appellant returned to work on August 12, 2002 and had stopped again on August 21, 2002 due to work stress. He stated that she was afraid to return to work. In a note dated September 18, 2002, the physician advised that, even though he released appellant to return to work on September 12, 2002 she felt she could not work due to unresolved issues. He diagnosed panic attacks with anxiety and depression and referred her to a psychiatrist. Dr. Capitly also submitted a form report dated September 18,

[1] It would appear that the "Robin Ware" identified by appellant is Robyn Webb.

[2] On September 17, 2002 appellant submitted a change of address. The September 27, 2002 letter was sent to the new address.

2002, in which he reiterated the above conclusions and advised that appellant was unable to work from August 5, 2002 until cleared by a psychiatrist.

By letter dated September 24, 2002, appellant retold the events of July 26, 2002, adding that after the confrontation with Ms. Green, she became distraught and developed a bad headache, which became worse. Appellant also submitted a letter she wrote to Eugene Rear, district manager, in which she complained about problems with the employing establishment.

In an October 18, 2002 letter, Mr. Dion informed the Office that he had been on vacation on July 26, 2002 but that upon his return on July 29, 2002 a meeting was held with appellant, Ms. Green, the union branch president and the human resources manager, in which the union discussed "prevailing" problems with the injury compensation office. Mr. Dion stated that appellant was not cooperative at the meeting and used confrontational language with the union, especially when informed that the open door policy would not be changed. He noted that appellant was referred to an Employee Assistance Program and scheduled for a predisciplinary interview (PDI) on August 5, 2002 but stopped work at midday after advising him that she was going home sick. Mr. Dion stated that on August 7, 2002 he was called by injury compensation in Northern Virginia about a job interview scheduled with appellant. He telephoned appellant who informed him she would keep the interview appointment in Virginia but could not return to work because of elevated blood pressure and wanted to change sick leave to annual leave. He informed her that all leave would end August 14, 2002, at which time she returned to work, called in sick on August 21, 2002 and returned on August 22, 2002, at which time he informed her that the PDI had been rescheduled for August 26, 2002. She then called in sick on August 23, 2002 and had not returned to work. Mr. Dion further advised that class action grievances had been filed on April 16 and May 22, 2002 against appellant, that the former was settled and the latter unresolved. He did not know the outcome of appellant's Virginia job interview.[3]

By decision dated October 29, 2002, the Office denied the claim, finding that appellant did not sustain an injury in the performance of duty. On November 21, 2002 appellant requested a hearing, which was held on July 30, 2003. At the hearing she testified that she was claiming harassment and was off work for several months.

Appellant thereafter resubmitted Dr. Capitly's treatment notes and, in an August 29, 2003 letter, reiterated her contentions. She also submitted a November 21, 2002 report from Richard A. Hadley,[4] a therapist, who stated that appellant presented with a depressive disorder and that her return to work was discussed. In an August 21, 2003 statement, Ms. Green advised that appellant's contentions about July 26, 2002 were "blatant lies" and that she did not point or yell at appellant.

By decision dated October 24, 2003, an Office hearing representative affirmed the prior decision, finding that appellant failed to establish a compensable factor of employment. The hearing representative further found that even had appellant established a compensable

[3] A letter dated September 4, 2002, indicates that appellant was not selected for the Virginia position.

[4] Mr. Hadley's credentials are unknown.

employment factor, the medical evidence was insufficient to establish her claim as it failed to identify the source of her stress.

LEGAL PRECEDENT

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.[5]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[6] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[7] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[8] When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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 results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.[9]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[10] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[11]

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[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] 28 ECAB 125 (1976).

[7] 5 U.S.C. §§ 8101-8193.

[8] *See Robert W. Johns*, 51 ECAB 137 (1999).

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

[10] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

[11] *Id.*

Furthermore, for harassment or discrimination to give rise to a compensable disability, there must be evidence introduced, which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[12]

ANALYSIS

In the instant case, appellant has not attributed her emotional condition to the performance of her regular duties as a human resources specialist or to any special work requirement arising from her employment duties as defined by *Cutler*. Rather, appellant's claim pertains to allegations of harassment, specifically that she was harassed by union representatives Ms. Green and Ms. Webb on July 26, 2002. Appellant has also generally alleged that she had been harassed by the union in the past. The Board, however, finds that appellant has submitted insufficient evidence to establish her claim as she submitted no corroboration evidence regarding the July 26, 2002 incident or her general allegation that she was subject to hostile treatment. The employing establishment submitted statements from both Ms. Green and Ms. Webb who disagreed with appellant's allegations. Furthermore, Mr. Dion advised that a meeting was held to resolve the issues between appellant and the union representatives. He noted appellant's hostile manner at the meeting and her disagreement with the "open door" policy regarding injury compensation. The Board, therefore, finds that appellant did not establish harassment on the part of the employing establishment.[13]

CONCLUSION

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

[12] *James E. Norris*, 52 ECAB 93 (2000).

[13] As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Roger Williams*, 52 ECAB 468 (2001); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 24, 2003 is affirmed.

Issued: April 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member