

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**PATRICIA J. McCRARY, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dallas, TX, Employer**

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**Docket No. 04-462  
Issued: April 12, 2004**

*Appearances:*  
*Patricia J. McCrary, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On December 12, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated November 19, 2003, denying appellant's claim for an employment-related emotional condition. Pursuant to 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 established that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On July 11, 2003 appellant, then a 53-year-old postal clerk, filed a claim for compensation alleging that she developed an emotional condition due to harassment and unfair treatment by her supervisor, Ella B. Hogg. Appellant asserted that the stress also caused her to develop sharp pains in her neck. Appellant stopped work on June 1, 2003 and returned to work on July 7, 2003.

In her narrative statement submitted in support of her claim, appellant described the events, which led to her development of an emotional condition. Appellant asserted that she has been under constant stress and harassment from Ms. Hogg for years, ever since Ms. Hogg became a supervisor. Appellant stated that she has tried to get along with Ms. Hogg to no avail and that Ms. Hogg continues to dislike and disrespect her, speak to her condescendingly and lie about her to management. Appellant alleged that Ms. Hogg harasses her by constantly paging her over the loudspeaker, even when she was within sight. She asserted that Ms. Hogg also constantly watches her, stands over her while she works, constantly corrects her in a loud voice and makes smart remarks and keeps track of her breaks and when she goes to the restroom, but does not treat other clerks this way. Appellant asserted that she could not go to the restroom without being paged. She stated that her coworkers harassed and joked about her having a popular name. Appellant also asserted that Ms. Hogg never selected her to attend any meetings or participate in any surveys and discriminated against her because she is black, female and married. Appellant stated that she tried to explain the situation to senior manager Cedric Looney and asked for a transfer away from Ms. Hogg, but Mr. Looney just laughed.

Appellant asserted that on January 8 and 14, 2003, Ms. Hogg threatened to remove her from her special work area and send her back to her prior work area. Ms. Hogg only pointed out time keeping errors when they were detrimental to the employing establishment, but never alerted appellant when she was in a work without pay status, resulting in her having several short paychecks. During an employee meeting regarding long breaks and lunches, Ms. Hogg stated that she planned to make an example out of someone, which appellant took as a threat. Appellant asserted that on May 12, 2003, Ms. Hogg paged her back to her work area and then walked all over the building searching for her, hoping to catch her doing something wrong. Finally, appellant stated that on May 30, 2003 Ms. Hogg paged her while she was in the restroom and when she returned to her work station, she asked Ms. Hogg if it was really necessary for her to page her every night. She stated that Ms. Hogg then asked appellant to come to the supervisor's lounge for an official discussion regarding her long breaks. Appellant stated that this was during a "crunch time" one half hour before the mail would arrive on the dock. Appellant stated that she was completely fed up with Ms. Hogg's harassment and told Ms. Hogg how she felt. She stated that during this confrontation, her blood pressure shot up and she had difficulty breathing and she had to go home sick. Appellant concluded that Ms. Hogg is a terrible supervisor and listed the names of several witnesses she felt would agree.

The employing establishment submitted a narrative statement from Ms. Hogg, who confirmed that on May 30, 2003 she asked appellant to come to the supervisor's lounge for an official discussion regarding her long breaks. Ms. Hogg stated that before she was able to begin the discussion, appellant started shouting at her, stating that she was sick of her and that she was stressing her out. Ms. Hogg stated that appellant then left and told Mr. Looney she wanted to go home because Ms. Hogg stressed her out. Ms. Hogg further stated that appellant continued to take long breaks and did not like to be told to go to work.

In support of her claim, appellant submitted medical reports and treatment notes from Dr. Sherril E. Durbin, her treating Board-certified osteopath specializing in family practice, who opined that appellant suffered from acute anxiety and cervical and trapezius strains and was totally disabled from June 3 to 20, 2003.

In a decision dated November 19, 2003, the Office denied appellant's claim on the grounds that she failed to establish any compensable factors of employment.

### **LEGAL PRECEDENT**

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.<sup>1</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability is deemed compensable.<sup>2</sup> On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> If a claimant implicates 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.<sup>6</sup>

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<sup>1</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>2</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>3</sup> *Id.*; see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>5</sup> *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>6</sup> *Id.*

## ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated November 19, 2003, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Federal Employees' Compensation Act.

Regarding appellant's allegations that the employing establishment, specifically Ms. Hogg, unreasonably monitored her activities at work, frequently paging her over the loudspeaker, searching for her, standing over her and timing her breaks, reprimanded her for overly long breaks, threatened to send her back to her former workstation and called appellant in for an official discussion during a "crunch time," the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>7</sup> Although the handling of disciplinary actions, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>8</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>9</sup> In the instant case, appellant did not provide any corroborative evidence to establish that these events actually occurred, or that, assuming they did occur; they were beyond the scope of Ms. Hogg's responsibilities as a supervisor. Conversely, Ms. Hogg explained her actions, stating that appellant takes long breaks and does not like to be told to go back to work. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Regarding appellant's allegation that Mr. Looney ignored her request to transfer away from Ms. Hogg and that Ms. Hogg never selected her to participate in meetings or surveys, the Board has previously held that denials by an employing establishment of a request for a different job or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>10</sup> Similarly, appellant's dissatisfaction with perceived poor management also constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>11</sup>

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<sup>7</sup> See *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> *Reco Roncaglione*, 52 ECAB 454 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>10</sup> *Ernest J. Malagrida*, 51 ECAB 287 (2000).

<sup>11</sup> *Marguerite J. Toland*, *supra* note 5.

Thus, appellant has not established a compensable employment factor under the Act in this respect.

Finally, appellant asserted that the actions on the part of her supervisors, discussed above and additionally the actions of her coworkers, who joked about her popular name, constituted harassment and discrimination and contributed to her claimed stress-related condition. Appellant stated that she was treated differently from the other employees. Appellant asserted that in further attempt to harass her, Ms. Hogg spoke condescendingly to her, as if she was a child, spoke to her in a loud voice, made smart remarks, did not respect her, lied about her to management, only pointed out timekeeping errors when they were unfavorable to the employing establishment and threatened to make an example of someone for taking long breaks, a comment appellant felt was directed at her. The Board has held that 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 could constitute employment factors.<sup>12</sup> 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.<sup>13</sup> In the present case, appellant's allegations are unsupported, as she has not provided any corroborative evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.<sup>14</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

### CONCLUSION

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. Therefore, the Board need not address the medical evidence of record.<sup>15</sup>

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<sup>12</sup> *Marguerite J. Toland, supra* note 5.

<sup>13</sup> *Reco Roncaglione, supra* note 9.

<sup>14</sup> *Marguerite J. Toland, supra* note 5; *James E. Norris, supra* note 9. 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.

<sup>15</sup> *Roger Williams, supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 19, 2003 is affirmed.

Issued: April 12, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member