United States Department of Labor
Employees' Compensation Appeals Board

GAYLE A. ANCRUM, Appellant	)	
and	)	**Docket No. 04-537**
	)	**Issued: April 16, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Johns Island, SC, Employer	)	

Appearances:
Gayle A. Ancrum, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 8, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 11, 2003, denying her claim for an 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 has met her burden of proof in establishing that her emotional condition resulted from compensable factors of her federal employment.

FACTUAL HISTORY

On February 1, 2002 appellant, then a 42-year-old distribution/window clerk, filed an occupational disease claim alleging she developed stress and a work-related psychiatric illness on January 10, 2002. She first attributed her condition to her federal employment on January 14, 2002. Appellant stated that following an employment injury on August 31, 2000 and surgery on July 10, 2001 the need for an additional surgery "brought on a lot of stress/depression and anxiety."

The Office requested additional factual and medical evidence in a letter dated March 8, 2002. By decision dated August 5, 2002, the Office denied appellant's claim finding that she failed to establish a compensable factor of employment as causing or contributing to her diagnosed emotional condition. The Office noted that if she attributed her current emotional condition to her accepted physical injury, she could pursue that claim as a consequential injury of the August 31, 2000 employment injury.

Appellant requested an oral hearing on August 26, 2002. She and her husband testified at the oral hearing held on June 24, 2003. By decision dated September 11, 2003, the hearing representative affirmed the Office's August 5, 2002 decision.

LEGAL PRECEDENT

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, she 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.[1] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[2]

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 illness has some connection with the employment, but nevertheless does not come within the concept 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 compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.[3]

ANALYSIS

Appellant alleged that her limited-duty job offers exceeded her work restrictions. The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if such activity is substantiated by the evidence of record.[4]

[1] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[2] *Id.*

[3] *Lillian Cutler,* 28 ECAB 125, 129-31 (1976).

[4] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

Appellant did not submit any evidence in support of her allegation that she was required to work beyond her physical restrictions. As she failed to substantiate this allegation, she failed to establish working beyond her restrictions as a compensable factor of employment.

Appellant has also alleged that harassment and discrimination on the part of her supervisors and coworkers contributed to her claimed emotional condition. For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation 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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[5] In this case, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.

Appellant asserted that on September 22, 2001 an acting supervisor, Andrew Mashburn, requested that she collect priority mail. She asked for assistance due to her lifting restriction and believed that Mr. Mashburn threw his soda can at her in response. After appellant completed the assignment, she allegedly overheard Mr. Mashburn state: "What they need to do is make her go over to the REC-SITE and work over there since she thinks she's so stressed." On September 8, 2001 Mr. Mashburn became loud, upset and used profanity. In December 2000, when appellant asked a customer to move to another window due to the weight of a package, Mr. Mashburn allegedly yelled, "That's not five pounds. If the customer can carry it you can!" Appellant stated that she felt unsafe and threatened by Mr. Mashburn. She also stated that Supervisor Dave Anderson made a comment that the employing establishment claims the department solved a lot of fraud cases through photographs. She felt that this statement questioned her integrity. Appellant also stated that she was ridiculed by coworkers due to her work restrictions and that coworkers and customers made fun of her for wearing splints. She stated that coworkers sang songs suggesting that she was "going crazy" and that a coworker suggested that if he bumped her leg, she would appear in a cast. The Board has recognized the compensability of physical threats and verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act. When sufficiently detailed and supported by the record, verbal abuse may constitute a compensable factor of employment.[6] Appellant submitted insufficient evidence to establish harassment or discrimination by her supervisor or coworkers as alleged.

Appellant also alleged that the postmaster discriminated against her by requiring her to report to work after power outages due to a storm. She stated that the postmaster threatened to fire her if he ever discovered that she lied. Appellant alleged that heavy packages were deliberately placed at her workstation and that she was forced to seek help from coworkers to move these items. She submitted no witness statements in support of her allegation of harassment or discrimination.

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[5] *Alice M. Washington*, 46 ECAB 382 (1994).

[6] *Dennis J. Balogh*, 53 ECAB 232, 236-37 (2001).

The only evidence appellant submitted in support of her allegations was a June 29, 2002 letter from Lisa J. Fellers, a union representative. Ms. Fellers noted that appellant had reported her coworker's attitudes, management's lack of compassion regarding her need to request assistance and her belief that Mr. Washburn threw a soda can at her. Ms. Fellers did not have any personal knowledge of the events alleged by appellant and could not substantiate that the incidents occurred as alleged. As appellant has not submitted sufficient evidence to establish verbal abuse, harassment or discrimination by Mr. Washburn, the postmaster or her coworkers, she has failed to meet her burden of proof and the Office properly found that she had not substantiated these compensable factors of employment.

Appellant alleged that she feared losing her job. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constituted a personal injury sustained while in the performance of duty within the meaning of the Act. When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are insufficient to constitute a personal injury sustained in the performance of duty. In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties.[7]

Appellant believed that she was being followed and watched by the employing establishment. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[8] Appellant has submitted no evidence supporting her allegation that the employing establishment followed her either on or off the job. As there is no evidence that the employing establishment acted unreasonably in the administrative function of supervising appellant, she has not established a compensable factor in this regard.

Appellant stated that the employing establishment placed a sign at her window specifying no items weighing over five pounds.[9] She stated that customers became upset with her if she had to ask that they move to a different window due to her lifting restrictions. Appellant has alleged that confrontations with the public have contributed to her emotional condition. She, however, has not provided sufficient evidence to document that such confrontations occurred as alleged. Without evidence substantiating appellant's allegation of unpleasant interactions with the employing establishment's customers, she has failed to establish a compensable factor of employment.

On her claim form appellant attributed her emotional condition to pain and discomfort due her on-the-job injury and the need for additional surgery due her August 31, 2000

[7] *Gregoria E. Conde*, 52 ECAB 410, 412 (2001).

[8] *Martha L. Watson,* 46 ECAB 407 (1995).

[9] Ms. Fellers statement suggests that appellant placed the sign on her own initiative.

employment injury. In the August 5, 2002 decision, the Office noted that any claim of a consequential injury resulting from the accepted wrist condition should be pursued under that claim. In the September 11, 2003 decision, the hearing representative discussed appellant's assertions that her emotional condition arose from stress due to her accepted employment-related wrist injury and the prospect of future surgery. He properly found that appellant's fear of possible additional surgery was not a compensable factor, as it was a fear of a future injury.[10] An emotional condition related to chronic pain and limitations resulting from an employment injury may be covered under the Act.[11] The Office specifically advised appellant that she should pursue any claim of a consequential injury attributed to her August 31, 2000 wrist injury under that claim number.

CONCLUSION

The Board finds that appellant has not established that her emotional condition on or after January 10, 2002 is a result of compensable employment factors.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[10] *Joseph G. Cutrufello*, 46 ECAB 285, 294 (1994).

[11] *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).