

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

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| CAROLYN GREEN, Appellant |) | |
| |) | |
| and |) | Docket No. 04-1609 |
| |) | Issued: December 22, 2004 |
| U.S. POSTAL SERVICE, POST OFFICE, MEMPHIS, TN, Employer |) | |
| |) | |

Appearances:
Carolyn Green, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 7, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated October 24, 2003 and March 2, 2004, which denied her emotional condition claim. 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 to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 2, 2003 appellant, then a 52-year-old supervisor on modified duty, filed a traumatic injury claim alleging that she experienced stress after reading emails which she received at work on August 27, 2003. Appellant stopped work on September 2, 2003. Appellant indicated that her supervisor, Beverly Collins, instructed her to check her email messages on August 27, 2003. Appellant received three messages on that date concerning the absorption of

the work hours of two limited-duty employees and herself. Appellant also alleged that she did not feel that the issue of work hours should take precedence over her position, which was modified to conform to limitations which resulted from a March 1990 work injury. She indicated that no effort was made by the employing establishment to provide her with another modified assignment or an explanation as to the criteria used to determine which two limited-duty employees the employing establishment would carry. Appellant alleged that she experienced stress, depression and uncertainty regarding her future.

In attachments dated September 4 and 11, 2003, Ms. Collins indicated that she was unaware of an accident involving appellant. She noted that on August 28 and 29, 2003 appellant reported for work and informed her that she only had an hour of sleep and was stressed from the emails of the prior day. Ms. Collins indicated that appellant frequented the restroom more than usual, and submitted two leave slips for September 2, 2003 and for the period September 3 to 5, 2003.

In a report dated September 4, 2003, Dr. Antoine Jean-Pierre, a treating Board-certified psychiatrist, determined that appellant was stressed, anxious and depressed and could not perform her "assignment." He requested that she be allowed 30 days off work for treatment.

In a letter dated September 17, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested that she submit additional supportive factual and medical evidence. A separate letter of the same date was sent to the employing establishment.

In an October 2, 2003 report, Dr. Jean-Pierre advised that appellant could not return to work and requested an extension of 60 days' disability for continued treatment. In an October 10, 2003 report, he indicated that appellant alleged mistreatment, harassment and displacement in light of her disabled status and that she was required to work beyond her capacity. He diagnosed prolonged major depressive disorder and panic disorder with anxiety, multiple injuries and kidney disease, along with diabetes. Dr. Jean-Pierre opined that appellant was morbidly obese and could not ambulate easily.

By letters dated October 3 and 18, 2003, the employing establishment advised that appellant refused to comply with the modified job offer, other than to submit a note from her psychiatrist who indicated that she was disabled from work without any supporting rationale. The employing establishment denied that appellant was required to work beyond her capacity, noted that her kidney disease and diabetes were not work related, denied harassment and repeated that appellant was given a modified job offer.

By letter dated October 14, 2003, appellant advised that, despite working in her modified position for seven and a half years, she was the only person given an official rehabilitation job offer. She alleged that two light-duty employees were allowed to remain in their positions while she was informed that her work hours would not be carried by the employing establishment.

In an October 24, 2003 decision, the Office found the evidence was insufficient to establish that appellant sustained an emotional condition in the performance of duty. The Office

determined that appellant's allegation of stress arose from an administrative action concerning an email involving job modification revisions, which did not arise in the performance of duty.

On December 2, 2003 appellant requested reconsideration and enclosed a copy of a vacancy announcement for eight inspection service operations technicians issued on August 11, 2003 and closing on August 25, 2003; a July 23, 2003 letter from the employing establishment informing her of a change in the labor distribution code and a February 7, 1996 disability certificate from Dr. Keener Blake Ragsdale, a Board-certified orthopedic surgeon, indicating she was permanently restricted to sedentary work. She also enclosed copies of the emails she received on August 27, 2003; information concerning a coworker, Annette Johnson, who was on limited duty; a limited-duty job description and notification of personnel action.

On December 29, 2003 the employing establishment indicated that it sought to ensure that appellant's tour of duty and location corresponded to her date-of-injury position. It also indicated that appellant had not responded to employing establishment job offers sent on September 4 and December 15, 2003. The employing establishment advised that it accommodated appellant's restrictions.

On January 26, 2004 appellant indicated that she was working successfully in her modified position when the employing establishment "chose to uproot" her and offered a position in a different location.

By decision dated March 2, 2004, the Office denied modification of the October 24, 2003 decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every 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 or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.⁴

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.⁵ 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition on August 27, 2003 as a result of reading several email messages concerning a proposed change in her modified-duty position. The Office found that appellant did not establish a compensable employment factor. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that she experienced stress when she read the emails on August 27, 2003 relating to a proposed change in her modified-duty position, the Board finds that this allegation relates to administrative or personnel matters and not to her regular or specially assigned work duties so as to fall within the coverage of the Act.⁷ The Board has 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.⁸

In statements dated September 8 and 9, 2003, Ms. Collins, appellant's supervisor explained that she was unaware of an incident on August 27, 2003. She was advised by appellant, on the following day, that appellant read several email messages relating to the absorption of work hours concerning appellant and two other limited-duty employees. The

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999). *See also Barbara J. Latham*, 53 ECAB ____ (Docket No. 99-517, issued January 31, 2002) (the assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act).

⁸ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

employing establishment explained that appellant was provided with a modified job offer. It noted that appellant refused to comply with the modified job offer, which was made in an effort to accommodate her. Appellant indicated that she felt that her position should not be changed. The Board notes, however, that the assignment of work generally are administrative matters and appellant's desire to work in a particular position is not a compensable factor. Appellant has not alleged that any inability to perform the duties of her position or attributed her emotional reaction to the performance of her job duties. The Board finds that the employing establishment's actions concerning advising appellant of changes to her modified position have not been established as erroneous or abusive. Appellant did not provide evidence to support her allegations that the actions of her supervisors were unreasonable. Appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

Appellant alleged that the emails she read on August 27, 2003 caused her to become uncertain about her future. She noted that she had performed the same modified position successfully, when her employer chose to "uproot" her. However, disabling emotional conditions resulting from an employee's feelings of job insecurity or from the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁹

In his October 10, 2003 report, Dr. Jean-Pierre obtained a history that appellant was mistreated, harassed and displaced by her employers. 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.¹⁰ 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.¹¹ In this case, the evidence of record does not establish administrative error in the assignment of modified duty to appellant or harassment by management. The history obtained by Dr. Jean-Pierre is not established by the evidence of record.

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.¹²

⁹ *Lillian Cutler*, *supra* note 2. See *Katherine A. Berg*, 54 ECAB ____ (Docket No. 02-2096, issued December 23, 2002) (where the Board held that a change in assignments and the reaction to the change was a frustration in not holding a particular position or being permitted to work in a particular environment and that it was not a compensable factor of employment).

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 2, 2004 and October 24, 2003 are affirmed.

Issued: December 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member